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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1938

No. 312

JOHN M. TAYLOR, OSCAR A. KENNEDY and H. RUSSELL HASTINGS, as the Independent Committee for the Protection of the Holders of Preferred Stock of Deep Rock Oil Corporation,

Petitioners,

vs.

STANDARD GAS AND ELECTRIC COMPANY, REORGANIZATION COMMITTEE OF DEEP ROCK OIL CORPORATION, H. N. GREIS, Trustee of Deep Rock Oil Corporation, and DEEP ROCK OIL CORPORATION,

Respondents.

BRIEF ON BEHALF

of

STANDARD GAS AND ELECTRIC COMPANY, Respondent

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vs.

STANDARD GAS AND ELECTRIC COMPANY, REORGANIZATION COMMITTEE OF DEEP ROCK OIL CORPORATION, H. N. GREIS, Trustee of Deep Rock Oil Corporation, and DEEP ROCK OIL CORPORATION,

Respondents.

BRIEF ON BEHALF

of

STANDARD GAS AND ELECTRIC COMPANY, Respondent

I.

Opinions of the Courts Below.

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals for the Tenth Circuit is reported in 96 F. (2d) 693-710. (Vol. I, pp. 477-505).

II.

Jurisdiction.

This Court granted a petition for Certiorari to the Circuit Court of Appeals for the Tenth Circuit on October 10, 1938. The statutory provision under which the juris-

diction of the Court was invoked is Section 240 (a) of the Judicial Code as Amended (28 U.S.C.A., Sec. 347). The decree of the Circuit Court of Appeals was entered on April 27, 1938 (Vol. I, p. 505). A petition for rehearing was filed by Petitioners on May 25, 1938 (Vol. I, pp. 507-526, 527). This petition was denied on June 6, 1938 (Vol. I, p. 527). Petition for Certiorari was filed August 30, 1938.

III.

STATEMENT OF THE CASE.

Our statement of the case is limited to the correction of inaccuracies and omissions in the statement of the case in petitioners' brief. The correction of certain of these inaccuracies and omissions will dispose at once of petitioners' irresponsible charges of theft, looting, fraud, deception and spoliation.

Important Omissions and Inaccuracies in Petitioners' Brief.

1. "By these orders, (which petitioners seek to review) * * * a five million dollar class of public preferred shareholders of the Debtor * * * were * * * practically eliminated." (Pet. Br., p. 2; parenthetical matter ours). The public preferred shareholders are "being wiped out by the compromise" (Pet. Br., p. 80).

These statements are squarely contradicted at page 12 of Petitioners' Brief, where it is stated that under the Amended Plan of Reorganization the preferred shareholders receive 100,000 shares of new common stock of the reorganized company out of a total of 520,000 shares of common stock, while Standard receives 380,000 shares of the same class of stock. On the basis of the $17,000,000

valuation of the Debtor's assets, as adjudicated by the District Judge (Vol. I, pp. 371-372), a finding which the petitioners characterize "as unfairly low" (Pet. Br. Specifications of Error, page 21, item 11), the preferred shareholders receive a participation in the equity of the reorganized company amounting to approximately $1,000,000. The "wiping out" argument is obviously inconsistent with petitioners' argument that the appraisal was low, since if the latter were true, the participation of the preferred shares would be the more valuable.

2. Standard extorted "huge sums from Deep Rock for its own private gain * * *; Standard stole from the Debtor" (Pet. Br., p. 47), and "obtained for itself over $5,000,000. of Deep Rock's funds" (Pet. Br., p. 44); Standard "was making huge profits" (Pet. Br., p. 57); Standard "mulcted its (Deep Rock's) assets and earnings" (Pet. Br., p. 59, parenthetical matter supplied); Deep Rock's security holders were preyed upon by Standard "by its fraudulent looting of Deep Rock's assets" (Pet. Br., p. 64); the Record discloses "the fraudulent looting by Standard of its completely dominated subsidiary, the Debtor" (Pet. Br., p. 70); there was "a wrongful diversion of Deep Rock's assets" (Pet. Br., p. 70-A).

In only two of the instances where these charges are made are there references to the Record (as required by Rule 27 of this Court), and in both those instances the Record at the places referred to does not support the charges.

The analysis of cash transactions between Standard and Deep Rock, annexed to this brief as Exhibit A, has been prepared from the Record. Each item bears specific reference to the Record. The analysis shows that from 1919 to 1933, Standard advanced to Deep Rock and for its account the sum of $31,804,145.04 in cash, and received

from Deep Rock $19,602,622.46 in cash and in the proceeds of the bonds and notes of Deep Rock received by it, so that *the net amount by which the cash advances of Standard to and for the account of Deep Rock exceeds all cash recovery by Standard from Deep Rock is $12,201,522.58.* This is the looting, stealing and diversion of Deep Rock's assets and cash referred to in Petitioners' Brief.

The chart on page 70-A of Petitioners' Brief is captioned "Wrongful Diversion of Deep Rock Assets." But on the right hand side of the chart, above the figures, appear the words "wrongful *charges.*" The fact is that the chart has no significance. The compromise figure which was approved by the District Court includes no disputed or debatable items (Vol. II, pp. 389, 562, 563, 704), and the issue before this Court is whether the District Court clearly abused its discretion in approving the compromise. The Circuit Court of Appeals found that:

> "The new offer eliminated all questionable items in the Standard claim which the trustee and his counsel felt were subject to disallowance on their merits." 96 F. (2d) 693, 701; Vol. 1, p. 488.

Petitioners have neglected to disclose to this Court the fact that these "wrongful charges" were not paid in cash, but are matched on the credit side of the Standard-Deep Rock account with $18,345,733.33 of indebtedness of Deep Rock to Standard which Standard surrendered and for which it accepted shares of common stock of Deep Rock (which did not substantially enlarge its interest in Deep Rock) (Vol. I, pp. 59-60). The common stock at the time had a market value of about $1. a share (Vol. II, p. 69). The common stock receives nothing under the Amended Plan of Reorganization.

We shall show in this brief that the characterization "wrongful" is improperly applied to the charges. (Infra, pp. 66-81).

We wish also to call to the Court's attention the omission of the following facts from the diagram at the left of the chart (Pet. Br., p. 70-A):

a. That Standard is not the only stockholder of Deep Rock. There are also outstanding 50,000 shares of preferred stock of Deep Rock (shares of the class represented by the independent committee, petitioners); that to the public holders of its preferred stock Deep Rock between July, 1926 and January, 1931 paid out cash dividends amounting to $2,542,519; and that these payments were made in cash furnished by Standard to Deep Rock (Vol. I, p. 54; Vol. II, p. 80).

b. That between Standard and Byllesby stand the holders of $73,649,500. of the outstanding funded debt of Standard (Vol. II, p. 392) and vast amounts of Standard's own capital stock held by the public (Vol. II, p. 603).

3. Standard "has continued to control the Debtor throughout the reorganization proceedings" (Pet. Br., p. 88).

The *facts* are these: The United States District Court for the Northern District of Oklahoma, which in March 1933 acquired jurisdiction over the properties and assets of the Debtor (Vol. I, p. 23), has since exercised such jurisdiction and control, first through its receivers and later through its Trustee (Vol. I, p. 49). The United States District Court for the District of Delaware on September 27, 1935, acquired jurisdiction over Standard Gas and Electric Company on the approval of its voluntary petition for reorganization pursuant to Section 77B of the Bankruptcy Act (Vol. I, p. 297). The Federal

Equity Receivership of the Debtor was a hostile proceeding in which the plaintiffs had asserted every adverse claim against the Debtor which is now asserted by petitioners in this court (Vol. II, pp. 687-697). The attorneys for the plaintiffs who had filed the complaint in the receivership proceedings were also the attorneys for the Trustee in the reorganization proceedings.

4. The "representation was absolutely false" (Pet. Br., p. 92) that the Trustee of the Debtor and his counsel have approved the compromise with Standard. This assertion is also made on pages 14 and 78 of Petitioners' Brief. In support, at pages 14-15 and 93 of their brief, petitioners quote from a colloquy in open court, in the course of which counsel for the Trustee and the Trustee stated that the Trustee had not *filed* any recommendations to either accept or reject the compromise. The quotation at page 15 of Petitioners' Brief omits the word "filed." Petitioners' Brief has neglected to call the attention of this Court to the statement of the Trustee's counsel, Mr. Ramsey, at the hearing on the compromise offer (Vol. II, p. 561):

> "First, I represent the Trustee, and concur with Mr. Gibson in recommending this settlement to the court. I want to say this much, that I regard that settlement as a good settlement."

The Trustee acquiesced in his counsel's opinion (Vol. II, pp. 523, 530). The Trustee had theretofore said (Vol. II, p. 705) with respect to the first compromise offer, that "he believes the proposed compromise is better than a continuation of the litigation. * * * This statement is fully approved by my counsel" (Vol. II, pp. 705-706), in a statement of the Trustee transmitted to the Deep Rock

stockholders and creditors at the direction of the District Judge (Vol. II, pp. 698-699).

5. "An unfairly low appraisal of the Debtor's assets • • • was prepared by prejudiced parties and admittedly gave no consideration to the Debtor's earnings as a going concern" (Pet. Br., p. 23).

This charge is unsupported by any reference to the Record, for the obvious reason that the appraisal was in fact made *by the Trustee*. The Trustee, who prepared the appraisal, is a man of character and standing in the community and had no prior connection of any kind with the Debtor, Standard or any affiliates of either (Vol. II, pp. 453, 514). The appraisal was based upon an analysis of the value of Debtor's assets as a "going concern". An independent expert testified (Vol. II, pp. 475-477) that in his opinion the Trustee's appraisal of the fixed assets "is a reasonable, fair valuation to a going concern", which he defined as "one that will continue to operate these properties and make the best of them."

The innuendo is clear at page 84 of Petitioners' Brief that Standard dictated the appraisal. There is not a scintilla of evidence in the Record that Standard had anything to do with the preparation of the appraisal—or even knew of its preparation. Although Petitioners' counsel cross-examined the witnesses with respect to the valuation, they made no effort to cross-examine any witness in order to ascertain as a fact whether Standard had anything to do with the valuation. That the innuendo respecting the persons who had been in the employ of the Trustee for more than three years (Pet. Br., p. 84) is baseless is also borne out by the fact that the appraisal work was done in September 1936 (Vol. I, p. 358). at which time Standard's claim had not been allowed, no compromise offer was pend-

ing (the second compromise offer was not executed until November 7, 1936, Vol. II, p. 734),[1] nor was any plan before the Court (the Amended Plan was not filed until November 9, 1936, Vol. I, p. 7).

6. Standard "pocketed directly" the entire proceeds of a $7,500,000. and $10,000,000. Deep Rock note issue sold to the public (Pet. Br., p. 38).

It is clear from the record that of the $9,395,151.80 proceeds from the sale of $10,000,000. of 6% notes of the Debtor due in 1933, the sum of $7,727,075.45 was deposited for redemption of $7,500,000. principal amount of notes of the Debtor held by the public due in 1928 (Vol. I, p. 57), and the balance was applied towards the payment of $1,922,-110.23 of other bonded indebtedness of Deep Rock to strangers (Vol. I, p. 61). The proceeds of the $7,500,000. loan, made in 1926 (Vol. II, pp. 297-301), amounted to $7,273,750. (Vol. I, p. 57), and were used to reimburse the Debtor for expenditures made for additions and extensions to properties and for retirement of funded debt (Vol. II, p. 299).

7. The District Judge "ruled that the objections of the Taylors urging the disallowance of the entire Standard claim were 'sustained' ". (Pet. Br., pp. 10, 16, 77-78).

The Record referred to at page 10 of the Petitioners' Brief (Vol. I, pp. 244-245) contradicts the statement we have quoted from Petitioners' Brief. What the Court ruled was (Vol. I, pp. 244-245): "That the objections heretofore filed herein to the Master's Report by William H. Taylor and John M. Taylor should be sustained." The Master's Report recommended the approval of the compromise,

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[1]It was not until November 2, 1936, that the District Court in Delaware granted permission to Standard to file the offer of compromise (Vol. I, p. 298).

(Vol. I, p. 202) and did not pass upon the merits of the claim.

At pages 10 and 11 of Petitioners' Brief appears an extended excerpt from remarks of the District Judge at the hearing on the first compromise offer. Even before we supply the material for which Petitioners' Brief substitutes asterisks, it is quite apparent from the last three lines on page 10 of Petitioners' Brief that the Judge was considering the proposed settlement with the first Plan of Reorganization which was then before him: "Now under this settlement, if I was to approve it, and in approving the Plan of Reorganization I would just as well say to the stockholders, you are wiped out."

The asterisks appearing at the end of the second line on page 11 of Petitioners' Brief take the place of these significant words uttered by the District Judge in the course of his hearing on the first offer of compromise (Vol. II, p. 407):

> "We had just as well start over, and if the Standard will submit a more fair plan of compromise,—they have got to give these preferred stockholders some better standing. I am not going to approve about $3,000,000. worth of Standard's claim on a parity with the first bondholders, or noteholders, and then approve another claim of a million and a half senior, because after you get past this three million, and from what I know of this company this $3,000,000. on a parity with ten million and interest * * * (These asterisks appear in the printed Record.) You had just as well look the facts in the face. Now I will approve some reasonable amount, and it will have to be a compromise; it will have to be a concession. I will approve a very reasonable amount upon a parity with the notcholders, and then I will approve the balance on a plan of reorganization of their claim on a parity with the preferred stockholders. In other words, I will give them preferred stock, and the pre-

ferred stockholders the next place, next to the noteholders, but the Standard will have to take their seat right along with these people they sold their stock to."

The second set of asterisks on page 11 Petitioners' Brief were substituted for the following remarks of the Court (Vol. II, p. 407):

"Now I would like to see a compromise made, and I will approve a fair one. I don't think it is fair, you had just as well be frank about it, if I thought so I would say so, I have all the confidence in the world in Judge West, and I thoroughly believe he thought it was best to stop this litigation. Now if they will reduce that amount, I will give them a reasonable amount along by the side of the noteholders, but it will have to be a very reasonable amount. Then I will approve the balance on a reorganization on a parity with these preferred stockholders, and their preferred stock will go along with the others."

Then followed the statement of the Court quoted in the second complete paragraph of the quotation on page 11 of Petitioners' Brief. Immediately thereafter there followed the further colloquy between counsel and the Court (Vol. II, pp. 407-408):

"Mr. Gibson: You cannot do that, Your Honor, until the case has been tried. The Master has not made a report on the claim at all.

"The Court: Understand this, Mr. Gibson, I would like to see you compromise. I don't believe you have offered compromise enough.

"Mr. Gibson: Well, the Trustee thought so, and his counsel thought so, and the Master thought so, and we have thought so.

"The Court: All I want to do is get it up. If you cannot compromise it, let it be appealed. I am willing to let it be argued again on its merits. Suppose I give you ten days to get up another offer of compromise.

"Mr. Gibson: You might give us ten days, but I don't know whether there will be any offer. Everybody is satisfied except these gentlemen.

"The Court: What I am trying to get at, this stock to be issued will stand on an equal basis with the preferred stockholders. I cannot bring myself to approve the issue superior to the preferred stockholders. Of course that may be just their hard luck. I don't know, stock dealers get in trouble sometimes."

We supply below such additional statement of the case as is necessary to correct all material omissions and inaccuracies in Petitioners' Brief. In the interest of brevity we shall try to avoid unnecessary duplication.

The Parties.

A. Petitioners.

Petitioners constitute a committee for the protection of the holders of preferred stock of Deep Rock Oil Corporation, and represent 10,295 shares of preferred stock of the Debtor out of a total of 50,000 shares outstanding, or slightly more than 20% (Vol. I, pp. 8, 33-34). Petitioners are the successors of William H. Taylor and John M. Taylor, hereinafter described, for whom the said Committee was substituted in the reorganization proceedings (Vol. 1, p. 8). At the inception of the reorganization proceedings, said William H. Taylor owned 300 and John M. Taylor owned 250 shares of preferred stock of the Debtor (Vol. I, pp. 99-100) out of 50,000 shares outstanding, which shares they had purchased in 1928. By the time of the entry of the order of confirmation of the plan, John M. Taylor, one of the petitioners herein, had acquired additional shares so that his holdings were 1,261 shares of such preferred stock (Vol. II, pp. 557-558). Such additional shares were acquired by said Taylor during the pendency of this litiga-

tion in this proceeding. The preferred stock has sold during the reorganization proceedings "as low as a dollar" and as high as $31. and $32. a share (Vol. II, p. 418). These shares of the Taylors represent a substantial part (approximately 12%) of the shares represented by the independent committee.

B. RESPONDENTS.

(1) Standard Gas and Electric Company.

Standard Gas and Electric Company (hereinafter referred to as "Standard") is a Delaware Corporation organized in 1910 and engaged in the business of owning and holding the bonds, debentures, notes, stocks and other securities of other corporations, particularly public utility and industrial corporations. Prior to 1919 Standard was largely an investment company (Vol. II, p. 2).

In September 1935, Standard went into reorganization proceedings pursuant to the provisions of Section 77B of the Bankruptcy Act, as amended, in the United States District Court for the District of Delaware (Vol. 1, p. 297). Standard was thereafter subject to the jurisdiction and control of said United States District Court for the District of Delaware until after the entry of the order confirming the plan of reorganization herein. Standard has its own creditors ($73,649,500. in funded debt alone, Vol. II, p. 392), and its own public stockholders (Vol. 1, p. 415). The total liabilities of Standard and its subsidiary and affiliated companies aggregate $1,196,937,780.52. (Vol. II, p. 392). The securities of Standard are publicly held—they are widely distributed and have for many years been listed and traded in on the New York Stock Exchange and other national securities exchanges (Vol. II, pp. 13, 689).

Until September 27, 1935 (the date upon which the United States District Court in Delaware, (Vol. I, p. 297) acquired jurisdiction over Standard), voting control of Standard was lodged jointly in H. M. Byllesby & Company (hereinafter referred to as "Byllesby") and other interests. Byllesby was an investment banking company engaged in underwriting, marketing and selling securities and holding investment securities (Vol. II, p. 3). In 1936, before the making of the second compromise offer and before the filing of the Amended Plan of Reorganization, Byllesby was completely divorced from its indirect right to vote the common stock of Standard (Vol. II, p. 412). The stock of Standard which theretofore had been voted by Byllesby was placed in a voting trust, the trustees of which are not officers of Byllesby (Vol. II, p. 469). The chart at page 32-A of Petitioners' brief fails to disclose these facts.

Prior to 1919, Byllesby had also engaged in engineering and management service (Vol. II, p. 3).

In 1919 Byllesby Engineering and Management Corporation (hereinafter referred to as the "Management Corporation") was organized under the laws of Delaware as a subsidiary of Standard (Vol. II, p. 3). It took over the engineering and management staffs of Byllesby, consisting of approximately five hundred to seven hundred fifty persons (Vol. II, p. 25), described in the record as highly trained technical experts and technicians in the field of management, engineering, insurance, advertising, rate making, finance and valuation (Vol. II, pp. 3, 7). The Management Corporation maintained a purchasing department through which mass purchases at quantity discounts were made for the corporations it served (Vol. II, p. 3), including Deep Rock Oil Corporation.

Standard is not an oil company and never owned oil properties or any other physical properties, (except office

furniture, books and records) (Vol. II, pp. 7, 8), and its investments, aside from the investment in the stock of Deep Rock Oil Corporation, have been and are exclusively in public utility and not in oil or industrial companies.

(2) Deep Rock Oil Corporation.

a. Organization.

Deep Rock Oil Corporation (hereinafter sometimes referred to as the "Debtor" or as "Deep Rock") was organized by one C. B. Shaffer, not Standard (Vol. II, pp. 635-636, 561). Up to 1919, Standard's investments were wholly in public utility securities. In that year, following negotiations with C. B. Shaffer, then the owner of the Deep Rock properties, a contract was entered into whereby it was agreed that Shaffer would organize (Vol. II, pp. 635-636) a corporation under the laws of Delaware and in consideration of $15,580,000. would convey to it certain oil properties, consisting of lands, developed and undeveloped, leases, plants, stations and equipment for the production of crude oil and the refining, manufacturing and sale of petroleum products, and that Byllesby would purchase from the Corporation so to be formed $11,000,000. principal amount of bonds, 50,000 shares of preferred stock of the par value of $100. each, and 120,000 shares of the common stock of no par value, and pay therefor the sum of $15,200,000. in cash (Vol. II, p. 636).

Shaffer organized the Debtor (Vol. II, p. 636) under the name Shaffer Oil & Refining Company; in 1931 the name was changed to Deep Rock Oil Corporation (Vol. II, p. 631). Shaffer received in consideration of the transfer of the properties by him to the Debtor $9,500,000. in cash, a note made jointly by Byllesby and Standard, due in

four months, for $1,000,000., 80,000 shares of the Debtor's common and 60,000 shares of the Debtor's preferred stock of the aggregate par value of $6,000,000. (Vol. II, pp. 10, 18, 638).

b. Management and Operation.

The Debtor has at all times been operated and managed by its own organization and personnel (Vol. II, pp. 5, 21, 24, 32, 36, 193, 224, 230, 231, 386, 390, 686; Vol. I, pp. 174-175).

Standard did not put any limitations on Deep Rock as to the manner of expenditure of the moneys loaned by it to Deep Rock by directing what it should or should not buy or whether it should or should not drill. Standard never directed the drilling of any wells or the purchase of any leases (Vol. II, p. 40). Nor does the Record suggest that Standard determined how, when or where oil should be found, refined, transported, marketed, bought or sold by Deep Rock (Vol. II, pp. 40, 41, 231).

The agreement with Shaffer provided that the common stock of the Debtor was to be deposited in a voting trust for ten years, one-half of the voting trustees to be named by Shaffer, the other half by Standard. The Board of Directors was similarly to be divided (Vol. II, p. 640).

It was agreed before organization of the Debtor that Shaffer, a man of considerable experience in the oil business (Vol. II, pp. 10, 11), was to remain with (as President) and operate the new company (Vol. II, pp. 640). Until March 18, 1921, Shaffer was the President and directing head of the Debtor and was a director (Vol. II, pp. 10, 11, 32, 332-333, 339-340, 632). In March 1921 he retired from the management of the Debtor. Thereafter, Standard owned most of the outstanding common stock of the Debtor

(Vol. II, p. 592), and from 1921 to 1932 inclusive voted its stock at annual meetings of stockholders to elect the entire Board of Directors of the Debtor (Vol. II, pp. 334-338). A majority of such directors, but not all, were also directors of Standard and during that period certain, but not all, of the officers of the Debtor were also officers of Standard (Vol. I, pp. 202-207). There is no suggestion in the record that the meetings of the Board of Directors of Deep Rock were not properly held or that they were held in the course of meetings of the Board of Directors of Standard. A list of the Deep Rock directors who attended its directors' meetings is set forth in the Record (Vol. II, pp. 303-308). The Circuit Court of Appeals found, 96 F. (2d) 693, 697 (Vol. I, p. 481), that:

> "The officers at Tulsa held frequent consultations with the officers and directors of Deep Rock in Chicago upon questions of acquiring additional gasoline stations, oil and gas leases, and other oil properties, and with reference to financing and general business policies. These conferences were consultive in character. *The officers at Tulsa were in actual charge of the operations and affairs of Deep Rock and were not dictated to by Standard or its officers.*" (Italics supplied.)

The principal operating personnel of the Debtor were not in any instances officers or directors of Standard from 1921 to 1932, except Gray, who was a director of Standard for one year. Thus:

In 1924, John L. Gray, an experienced engineer and refinery operator, was engaged as executive Vice President and general manager of the Debtor and continued in that capacity until February 28, 1933, when the Debtor passed into a Federal Equity Receivership (Vol. II, p. 32).

In May, 1922, one L. B. Riddle became Vice President of the Debtor, in charge of production (Vol. II, pp. 9, 14).

Mr. Riddle remained in that capacity until February 28, 1933 (Vol. II, p. 355). During the period of the employment of Gray and Riddle they both had complete management, control and direction of Deep Rock (Vol. II, pp. 5, 6, 9, 32). Each of them owned securities of Deep Rock and neither had any interest in Standard or Byllesby (Vol. II, pp. 63, 66, 162, 224-226), except that Gray served as a director of Standard for one year (Vol. II, p. 329).

Other managing personnel of Deep Rock included Bernard L. Majewski, manager of the Debtor's distribution division (Vol. II, pp. 19, 31). Majewski was connected with the properties since the time of the Shaffer ownership, i.e., before the organization of Deep Rock (Vol. II, p. 9). From 1928 to 1933 he was a director of Deep Rock and Vice President in charge of sales (Vol. II, pp. 335-338, 347-355).

W. E. Moody was in charge of refinery operations first during the period of ownership of the properties by Shaffer and later following acquisition thereof by Deep Rock (Vol. II, pp. 107-108). In 1922, he became a vice president of Deep Rock in charge of refinery operations (Vol. II, p. 342), and in 1928 he became a director (Vol. II, p. 335).

William R. Francisco, became associated with Deep Rock in 1919 and was in charge of auditing, accounting and finances. He became a director and Treasurer in 1923 and continued in that capacity until February 28, 1933 (Vol. II, pp. 36-37).

O. O. Kerr became associated with Deep Rock at the time of its organization. From 1922 until February 28, 1933, he was Assistant Treasurer of Deep Rock (Vol. II, p. 102).

Neither Moody, Majewski, Francisco or Kerr was at any time interested in or an officer, director or employee of Standard or Byllesby.

c. The Separate Corporate Status of Deep Rock.

Deep Rock has at all times maintained itself as a separate corporate entity, entirely separate and apart from Standard, and the Special Master found as a fact that "Throughout the transactions here involved, the separate corporate entity of each of the respective corporations concerned was at all times maintained." (Vol. I, p. 175). It always kept its own books and distinct corporate records, and observed all the formalities of corporate organization and existence (Vol. II, pp. 387, 703). It paid its own officers and employees (Vol. II, pp. 193, 703). Shortly after Mr. Gray became Executive Vice President, its own offices were moved to Tulsa, Oklahoma. Theretofore, it had maintained its own offices at Chicago (Vol. II, p. 32). The officers of Deep Rock at Chicago and later at Tulsa were in actual charge of the operations of Deep Rock and were not dictated to by Standard or its officers (Vol. II, pp. 40, 231).

The assets of Deep Rock and Standard were never commingled. (Vol. II, pp. 387, 561, 703). The Circuit Court of Appeals so found on the Record, 96 F. 2nd, 693, 697 (Vol. I, p. 481).

d. The Capital Structure of Deep Rock.

The original stock capital of Deep Rock was very substantial. It consisted of the following:

> Preferred stock, 110,000 shares of the par value of $100. per share, to wit, an aggregate of $11,000,000.;
> Common stock, $1. par value—200,000 shares;

an aggregate capital of preferred and common stock of $11,200,000. (Vol. II, pp. 10, 18, 636).

$6,000,000. par value of preferred stock was issued for

property (Vol. II, pp. 10, 18, 638) and the remaining shares of preferred stock and the common stock were issued for $5,200,000. in cash (Vol. II, p. 636).

Additional cash required by Deep Rock to finance the purchase by it from Shaffer of the oil properties to be acquired was obtained through the flotation of a first mortgage bond issue (Vol. II, p. 636).

When in 1921 Shaffer surrendered 50,000 shares of preferred stock and 80,000 shares of common stock (Vol. II, p. 634), no capital was withdrawn from the corporation (Vol. II, pp. 11, 630).

In March 1928, Standard surrendered indebtedness of Deep Rock to it aggregating $11,122,400. and accepted therefor common stock at a stated price of $50. per share (Vol. I, pp. 57-59). Standard then owned 90,000 shares of preferred stock of Deep Rock, for which in 1928 it accepted 180,000 shares of common stock. (For 80,000 shares of preferred stock, Standard had credited to Deep Rock $7,223,333.33. (Vol. I, p. 57) in 1926. The other 10,000 shares of preferred stock had been acquired by Standard from Shaffer at a cost of $1,000,000., which Standard paid to Shaffer (Vol. II, pp. 638, 642)).

The gross earnings of Deep Rock in 1919, the year of its organization, were $9,234,585.40 (Vol. III, p. 115). In 1920 these gross earnings were $12,194,242.24 (Vol. III, p. 115). A balance sheet as of March 31, 1921 (when Shaffer withdrew from the management of Deep Rock) showed a capital and surplus account of more than $14,243,100.08. against total assets of $29,032,453.39. (Vol. III, p. 116).

The capitalization of Deep Rock enabled it to earn an operating profit of about $6,000,000. in 1926, (Vol. III, p.

104), about $3,000,000. in 1927 (Vol. III, p. 106), and about $4,000,000. in 1928 and 1929 (Vol. III, pp. 108, 110).

(3) Reorganization Committee.

The deposit agreement of the Reorganization Committee was approved by the District Judge upon the petition of the Reorganization Committee (Vol. I, pp. 72-77). The order of the District Judge permitting intervention of the Reorganization Committee and approving the deposit agreement was made after a hearing (Vol. I, p. 83).

The Reorganization Committee proceeded immediately following its organization in 1933 to independently study with the aid of its counsel the relationships between Deep Rock, Standard, Byllesby, the Management Corporation and Deep Rock Oil and Refining Company (hereinafter described). (Vol. II, pp. 425, 433-434, 439-440, 819-820, 824). The Reorganization Committee engaged independent accountants (Vol. II, pp. 69, 425, 819).

At every stage in the proceedings security holders who had deposited with the Reorganization Committee were given an opportunity to withdraw without expense (Vol. II, pp. 721, 825, 843; Vol. I, pp. 291, 355).

On February 3, 1937 there were on deposit with the Reorganization Committee 82% principal amount of the Deep Rock notes and 58% of the Deep Rock preferred stock (Vol. II, p. 579). In addition, the Reorganization Committee had authority to accept the Plan of Reorganization and approve the compromise of the Standard claim by the owners of 1270 shares of preferred stock, which had not theretofore been deposited with the committee (Vol. II, p. 872).

The District Judge found as a fact that in view of the numerous opportunities to withdraw deposited securities and in view of the exhortations for withdrawal which had been transmitted by the petitioners to the security holders of the Debtor since 1935 (Vol. II, pp. 706-713; Vol. I, p. 323), it must be recognized that the representation by the Reorganization Committee was representation of well informed security holders (Vol. II, p. 570).

(4) H. N. Greis, Trustee of the Debtor Corporation.

Mr. Greis was appointed a Receiver of the Debtor in the Federal Equity Receivership which preceded the reorganization proceedings under Section 77B (Vol. II, p. 514). In June, 1934, when the 77B proceedings were instituted, Mr. Greis was appointed sole trustee (Vol. II, p. 514). He has operated and been in charge of the Debtor since receivership (Vol. II, pp. 514-531). Mr. Greis had had no prior connection of any kind with any of the corporations affiliated with Deep Rock or Standard (Vol. II, p. 514). He is a man highly respected in the oil industry and in the community (Vol. II, p. 453).

Judge Ramsey, counsel for the Trustee, had never been employed by Standard in any way in any case nor had he had any business dealings with Standard or any Standard subsidiaries or anybody connected with Standard (Vol. II, p. 392). Indeed Judge Ramsey in 1933 had represented hostile minority common stockholders of Deep Rock (Vol. II, pp. 687-697). It was he who first asserted the objections to the Standard claim (Vol. II, pp. 687-697).

The Amended Plan of Reorganization.[1]

The Amended Plan of Reorganization (hereinafter sometimes referred to as the plan) which was confirmed by the District Court was prepared by the Reorganization Committee (Vol. I, pp. 247, 276, 284).

Moody's Investors Service and Standard Statistics Co., Inc., well known investment counsel, recommended the settlement and plan (Vol. II, pp. 685-686).

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[1]The Amended Plan of Reorganization deals with the following classes of security holders of the Debtor (Vol. II, pp. 717-817):

1. 6% Notes, of which there are outstanding $10,000,000 principal amount, due March 1, 1933, and accrued interest from March 1, 1933.

2. Claim of Standard as a creditor in the amount of $9,342,642.37, reduced to $1,500,000 pari passu in rank with the claims of the Notes above described and a balance of approximately $3,500,000 junior in rank to the claim of such Notes.

3. $7 Preferred Stock of which there are outstanding 50,000 shares of no par value upon which accumulated dividends at the date of receivership amounted to $758,833.33. (Vol. II, p. 821).

4. Common stock of no par value, of which 599,475 shares are outstanding.

The treatment accorded to the above described interests under the plan is as follows:

(1) Noteholders: $10,000,000 in Income Debentures, plus $1,200,000 in cash and 40,000 shares of common stock (approximately 7% of the total issue), and an amount equal to 6% per annum from January 1, 1937 to the date of the new debentures to be paid in cash.

(2) Standard as claimant: No income debentures—380,000 shares of common stock (approximately 73% of the total issue).

(3) Preferred stockholders: 100,000 shares of common stock (approximately 20% of the total issue).

(4) Common stock: Nothing.

The Claim of Standard Gas and Electric Company.

A. The Claim of Standard is Upon an Open Account.

The claim appears in the Record at Vol. I, pp. 51-63.

The amount of the Standard claim is $9,342,642.37. It consists of the difference between charges of $13,854,650.11 and credits of $4,512,007.74 since February 24, 1928. The aggregate of the charges of Standard to Deep Rock from June 1, 1919 (when Deep Rock was organized) to and including February 28, 1933, amounted to $52,529,709.34. The aggregate sum of the credits in favor of Deep Rock (including credits aggregating $18,345,733.33 for shares of common and preferred stock issued to Standard upon the surrender of certain indebtedness from Deep Rock to it) amounted to $43,187,066.97. The amount of the claim was certified as correct by Haskins & Sells, Certified Public Accountants, employed by Standard (Vol. II, pp. 59-60; Vol. III, p. 147); and also found to be correct by Peat, Marwick, Mitchell & Company, Certified Public Accountants employed by the Debtor, by the Receivers and by the Trustee (Vol. II, pp. 61, 376-377). Both firms are internationally known and respected firms of accountants. The audits proved the balance according to the books of both companies (Vol. II, pp. 59-61).

Mr. Dell, an accountant called as a witness by the petitioners (Vol. II, p. 542), testified that his examination disclosed a very few items of "errors in accounting or in calculation" (Vol. II, p. 547). One such error, according to Mr. Dell, was that interest was computed on the basis of 360 days a year in lieu of 365 days in some instances which he checked (Vol. II, pp. 547-548). The only other transaction that Mr. Dell questioned was the discount of $170,000. on $4,250,000. face amount of 5 Year 6% Notes

of Deep Rock received by Standard in 1927, the question resulting from the fact that the notes were "taken up in a little over a year, but none of the discount was adjusted" (Vol. II, p. 548). This note and the discount constituted part of the indebtedness of $11,086,195.85 to Standard on February 24, 1928, for the surrender of which Standard accepted shares of common stock of the Debtor of no substantial market value (Vol. I, pp. 58-59; Vol. II, pp. 68-69, 114, 273-275, 701-702). The amount of $11,086,195.85 was made up of the $4,250,000. of notes (Vol. I, p. 58), and $6,836,195.85 of open account indebtedness (Vol. II, p. 68).

The entire balance in the Standard claim has accumulated since February 24, 1928 (Vol. I, pp. 58-60, 62; Vol. II, pp. 68-69), as the slate was wiped clean in 1928 by the surrender of indebtedness in exchange for common stock.

B. Standard's Conduct in Its Dealings with the Debtor.

1. Standard's officers and directors were and are responsible to the creditors (Vol. II, p. 392) and stockholders of Standard for the collection of the debts due to it.

2. Standard was the banker for the Debtor and as such was consulted on all financial matters (Vol. II, pp. 22, 28, 33, 36-37, 74).

3. Standard was the sole source of cash available to the Debtor and supplied cash to the Debtor when the officers of Deep Rock who operated it and had no connection with Standard said that Deep Rock needed it (Vol. II, pp. 35, 37). But for Standard's financial assistance to the Debtor, the latter would long ago have been sacrificed (Vol. II, pp. 26, 224). The need for financial assistance arose from various causes. In 1922, additional cash was needed because Deep Rock's officers had decided to expand through the purchase of oil and gas leases for the purpose of development (Vol.

II, p. 225). Early in 1923 additional cash was necessary because production had declined "at a very alarming rate." (Vol. II, p. 34). Due to decline in operating income beginning in 1921, it was necessary from time to time for Deep Rock to borrow cash from Standard, although the forecast of normal operations did not contemplate such necessity (Vol. II, p. 38). The steady decline in oil prices, from $3.50 a barrel in 1918 to as low as $.30 a barrel in 1931 and 1932 was undoubtedly a contributory cause to the need for additional cash (Vol. II, p. 478).

4. From 1919 until 1928 the net amount by which the cash advanced by Standard to Deep Rock and Standard's cash expended for Deep Rock's account to third persons (having no connection or affiliation with Standard or Deep Rock) exceeded the amount of cash repayments by Deep Rock (including proceeds of securities of Deep Rock received on account) was $9,826,354.67. From February 24, 1928, to the date of the federal equity receivership, the excess of such cash advances by Standard over all such cash repayments by Deep Rock was $2,375,167.91, a combined total of $12,201,522.58. See Exhibit A, infra.

5. On April 15, 1926 the indebtedness of Deep Rock to Standard on open account was $14,853,379.57 (Vol. II, p. 126). Standard accepted payment of $7,223,333.33 of this indebtedness in the form of 80,000 shares of preferred stock of the Debtor of the same class as the stock held by the Petitioners (Vol. I, p. 63).

6. On April 15, 1928, $7,500,000 of indebtedness of Deep Rock in the form of 6% Two Year Notes, held by the public, was to become due (Vol. II, p. 256). In order to refund this debt, Deep Rock proposed the issuance of $10,000,000 Five Year Six Per Cent Notes due March 1, 1933 (the Notes now outstanding and dealt with under the plan of reorgani-

zation). On February 24, 1928, as we have shown, the indebtedness of Deep Rock to Standard was $11,086,195.85; in addition, as we have shown, Standard was the owner of 90,000 shares of the preferred stock of the Debtor. Standard thereupon accepted 222,448 shares of the common stock of the Debtor in surrender of the balance of the indebtedness in the open account (Vol. I, p. 59; Vol. II, p. 8) and converted its 90,000 shares of preferred stock into 180,000 shares of common stock (Vol. I, p. 59). The common stock taken by Standard in satisfaction of its indebtedness was computed at the rate of $50 per share (Vol. II, p. 69) and the preferred stock owned by Standard was similarly converted on the basis of $50 per share for each share of common stock, two shares of common stock being issued for each share of preferred stock (Vol. II, p. 69). A very small balance remained in the open account since it was not possible to adjust the balance to a penny (Vol. II, p. 69). In view of the fact that Standard already owned practically all the common stock of Deep Rock, the interest of Standard in Deep Rock was not substantially enlarged by these transactions (Vol. I, pp. 59-60). The common stock was not worth $50. per share, and it is doubtful whether it could have been sold at more than $1.00 per share, (Vol. II, p. 69) but the exchange was made at the $50 figure so as not to dilute the existing conversion rights of the outstanding preferred stock of Deep Rock (Vol. II, p. 69). With respect to this transaction, the trustee stated:

> "This transaction in no way injured the Deep Rock. It was beneficial to the Deep Rock and its preferred stockholders and the Trustee is advised by his counsel that it would be unwise to undertake to go back beyond this April, 1928, settlement." (Vol. II, p. 702.)

7. From April 1928 until January 1931, Standard advanced to Deep Rock funds for the payment to the public

preferred stockholders of Deep Rock, the class of security holders represented by the petitioners, of the sum of $585,151. in dividends (Vol. I, p. 61; Vol. III, pp. 63, 121).

8. The open account of Standard.

While the claim of Standard consists only of a balance which has accrued since the end of February, 1928 (Vol. I, pp. 59-60), the exhibit to the proof of claim (Vol. I, pp. 61-63) traces a history of the open account from its beginning in 1919. We will show in our argument (pp. 66-81, *infra*) that portions of these items accrued before, and other portions after, the 1928 debt surrender.

The items in the open account of Standard with Deep Rock from 1919 to the date of the federal equity receivership fall into certain general categories as follows:

(a) Cash expended by Standard to or on behalf of Deep Rock amounted to $31,804,145.04. (See analysis of cash transactions, Exhibit A, *infra*). Of this amount, $6,850,971.50 was expended after February 24, 1928. The amount of $31,804,145.04 includes $17,473,478.05 paid directly to Deep Rock.

(b) Management and supervision fees paid by Standard to the Management Corporation amounted to $1,219,034.83. (Vol. I, p. 55). In addition, Standard reimbursed to the Management Corporation the sum of $230,463.16. for sundry charges disbursed by the Management Corporation on behalf of the Debtor. A detailed itemization of these charges appears in the Record (Vol. III, pp. 27-40). The Management Corporation, as we have shown, maintained a large and expert organization (Vol. II, pp. 3, 25). The Management Corporation rendered engineering, operating, financial, auditing, insurance, publicity and other services to Deep Rock (Vol. II, pp. 10, 25, *seq.*, 57, 58, 63, 64, 108). The services included the benefit of discounts on purchases made by the Debtor through the Management Corporation as a result of the latter's

vast purchasing power (Vol. II, pp. 54-55). The charges of the Management Corporation were made upon the basis of an agreement with the officers of Deep Rock (Vol. II, pp. 25, 28, 63, 64, 100). Mr. Braheney, a Vice President and the Auditor of Standard, testified (Vol. II, p. 100) that the fees charged to Deep Rock, though usually based on a percentage of gross earnings, were less than the percentage considered fair (Vol. II, pp. 100-101).

(c) Interest charges by Standard to Deep Rock on open account balances amounted to $4,819,222.07. (Vol. I, p. 55). These interest charges were less than what Standard had to pay for the use of the money which it made available to Deep Rock (Vol. II, p. 65). Interest on daily balances in the open account was computed and charged to the open account monthly at the rate of 7% per annum during the entire period (Vol. II, p. 116). This was done pursuant to an agreement with the officers of Deep Rock (Vol. II, pp. 161-162). Between December 24, 1926 and January 24, 1927 there was an open account balance in favor of Deep Rock upon which Deep Rock charged Standard interest at the same rate, computed in the same manner (Vol. II, p. 129).

A computation of interest on the open account indebtedness of Deep Rock to Standard at 5% per annum simple interest was prepared by a witness in response to an interrogatory addressed to the witness by the Trustee (Vol. II, pp. 134-136). Such computation indicates that interest on daily balances on the account computed at 5% per annum simple interest would amount to $3,070,436.49.; and at the same rate, but deducting all charges on indebtedness arising out of the Refining Company transactions, would amount to $2,658,637.52.

(d) Charges for dividends declared and payable to Standard. These dividends amounted to $3,502,653 (Vol. I, p. 55). Of this amount, $1,555,981. represents charges for dividends on preferred stock, for which Standard, as we have shown, had paid more than $8,223,333.33. The holders of the same class of preferred stock, including the stock represented by Peti-

tioners, collected in the aggregate in dividends the sum of $2,542,519 since 1926 in cash advanced by Standard to Deep Rock (Vol. I, p. 54; Vol. II, p. 80). The remaining $1,946,672. represents charges for dividends declared on common stock of Deep Rock held by Standard. The sum of $102,576. was advanced by Standard to Deep Rock to enable the latter to pay common stock dividends on common shares held by the few public holders of common stock (Vol. III, p. 121). The common stock dividends declared in favor of Standard prior to February, 1928 aggregated $1,106,000. (Vol. III, p. 121); and this amount constituted a portion of the $6,872,400. due on o en account from Deep Rock to Standard in satisfa tion of which Standard accepted shares of common stock of the Debtor (Vol. I, pp. 58-60; Vol. II, p. 89). In the present open account constituting a portion of Standard's open account claim, there is included one item of $840,672, representing a common stock dividend declared in 1928, but not paid to Standard.[1] This item is not included in the compromise figure (Vol. II, pp. 389, 562, 563, 704).

(e) Rental charges upon a lease to Deep Rock of the properties owned by Deep Rock Oil & Refining Company, a Standard subsidiary, amounted to $4,525,000. (Vol. I, p. 56). This charge arises out of the so-called Refining Company transaction. (Deep Rock Oil & Refining Company is herein sometimes referred to as the "Refining Company.") Upon this transaction the Petitioners rely to support their argument that the corporate instrumentality rule should be so applied as to deprive Standard of any claim, and result in unjust enrichment to Deep Rock preferred stockholders. Of all the transactions involved in the open account, this was the only one that Judge Ramsey, the Trustee's counsel, found questionable (Vol. II, pp. 389, 390-391). With respect to this transaction, the fol-

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[1] In 1929, following declaration of a dividend on the common ock, Standard was entitled to receive $980,784. which amount, wever, it converted into common stock of the Debtor at the te of $52.50 per share (Vol. II, p. 89).

lowing facts, appearing in the Record, are both pertinent and important:

(1) Deep Rock did not have adequate finances with which to build a cracking plant (Vol. II, p. 19).

(2) The Universal Oil Products Company, owner of the patents, would not take a royalty guarantee of Deep Rock but was willing to accept one from Standard (Vol. II, pp. 19-20).

(3) When Standard bought the Bradstreet properties it was already advancing $50,000. a month for property and acreage (Vol. II, pp. 33-34). The Bradstreet purchase required an additional advance in excess of what Standard had arranged to make to Deep Rock.

(4) Standard paid for the Bradstreet properties (a portion of the Refining Company's assets). Of the $650,000. purchase price, $500,000. was paid in cash by Standard, and the balance of $150,000. in three equal notes of the Debtor (subsequently paid by Standard) (Vol. I, p. 178). Deep Rock received a credit for these notes (Vol. II, p. 53). Subsequently in 1925, when the Refining Company's stock was issued to Standard, Standard credited to Deep Rock's account the amount of $1,894,592.11., representing construction costs of the cracking plant disbursed by Deep Rock (Vol. II, p. 53) (and charged by it to the accounts of Graf and Kennedy as Trustees) out of funds advanced by Standard (Vol. II, p. 67).

(5) The Debtor enjoyed the profits of operation of the Refining Company properties prior to the transfer of the Refining Company's stock to Standard. This profit from the operation of the Bradstreet properties amounted to $789,649.19 before retirements, and to $659,879.10 after retirements (Vol. II, p. 53). In addition, Deep Rock enjoyed the profits of operation of the cracking plant during the same period. The total net profits realized and retained by Deep Rock from both the cracking plant and Bradstreet properties prior to the transfer of the Refining Company stock to Standard was $1,619,398.88 (Vol. II.

pp. 53, 102). In the three months in 1925 following the acquisition of the Refining Company's stock by Standard, Deep Rock had a net income from the Bradstreet properties (after deduction of rentals and all operating charges) of $124,666.75 (Vol. III, p. 23) and from the cracking plant department (after deduction of rentals and all operating charges) of $15,236.42 (Vol. III, p. 24), a total of net earnings after all rentals and charges of $139,903.17, for the three months following the acquisition of the Refining Company stock by Standard. In 1926 Deep Rock's net earnings (after deduction of rentals and all operating charges) from the Bradstreet properties amounted to $470,659.52 (Vol. III, p. 23), and from the cracking plant department, after similar deduction of all rentals and charges, to $308,253.86 (Vol. III, p. 24), or a combined total of net earnings after deduction of all rentals and other charges for the year 1926 of $778,913.38.

(6) The rental fixed on the Refining Company property was regarded as "the proper amount which any company would willingly pay an outside interest for money in an oil investment. Having that in mind, Standard, advancing money to the Refining Company, would naturally have in mind that such money advanced for such purpose should have the return as it would get from the public." (Vol. II, p. 165).

The compromise offer not only contains no amount for rentals on the Refining Company property since 1928 but subtracts from the non-debatable items of Standard's claim rental charges prior to January 31, 1928 aggregating $1,475,000. (Vol. I, pp. 238-241), notwithstanding the fact that this item was not included in Standard's claim against Deep Rock due to the surrender which occurred in 1928.

(7) The credit in favor of Deep Rock for the cost of the cracking plant served only to reduce the debt of Deep Rock to Standard (Vol. II, p. 53). As we have shown above, Standard has its own public creditors and public stockholders.

(f) Miscellaneous charges (including disco banking charges and reimbursement of out-of-p expenses and disbursements advanced by Standar behalf of Deep Rock) make up the balance of cha in the open account (Vol. I, pp. 55-56).

9. There was no fraud in the relationship between St ard and Deep Rock. Judge Ramsey, counsel for Trustee, testified that after a "pretty keen lookout to fraud" (Vol. II, p. 391), he found nothing question except the Refininig Company lease (Vol. I, pp. 389, 391).

Circuit Judge Williams, concurring in the decision Judge Phillips in the Circuit Court, found that "no fr appears in the record", 96 F. 2nd, 693, 707 (Vol. I, p. 5

C. The Compromise Offer Approved by the Distr Judge.

The District Judge (Vol. II, pp. 407-408, 461), the S cial Master who had heard all the testimony on the mer of the claim as well as argument on the first offer compromise (Vol. I, pp. 194-197, 200), and the Truste counsel (Vol. II, pp. 385, 388-389, 703) found that the were debatable issues of fact and law involved in the co troversy surrounding the Standard claim. For the sa of brevity we shall defer until our argument an extende discussion of the compromise offers, limiting ourselves this point to a reference to the following matters appea ing in the Record:

1. The compromise offered by Standard (Vol. II, p. 731 consists principally of the following:

a. Standard is to be allowed a claim in the amoun of $2,376,076.31 with simple interest at the rate o 5% per annum, the principal amount of this claim representing the amount paid by Standard to third parties not affiliated with Standard for the account of Deep Rock since February 24, 1928, for which Deep

Rock was legally obligated to such third parties, after allowing Deep Rock credit in full for all payments thereon made by it. The analysis of cash transactions, Exhibit A, infra, contains Record references to all the items included in the above amount.

b. Standard is to be allowed a claim for $1,585,485.18 with simple interest at the rate of 5% per annum, the principal amount of such claim being the original cost of the Bradstreet properties paid by Standard ($650,000), plus the amount of disbursements of Deep Rock for the benefit of the Refining Company ($1,894,592.11) which Standard had credited to Deep Rock, less rentals charged by the Refining Company to Deep Rock, prior to February, 1928, amounting to $1,475,000 (which last sum had already been absorbed in the surrender of indebtedness against receipt of common stock by Standard in 1928, Vol. I, pp. 239-240).

c. Standard is to cause to be delivered to Deep Rock all the outstanding shares of capital stock of the Refining Company and is to assign to Deep Rock its claim against the Refining Company for $1,882,092.11, represented by the Refining Company's note, and all other claims of Standard against the Refining Company.

d. $1,500,000. of the aggregate of the Standard claim as compromised is to be allowed on a parity with the $10,000,000. principal amount of Notes of Deep Rock; the balance is to be subordinated to such notes and other indebtedness. As we have shown above, Standard is to receive 380,000 shares (73%) of new common stock for its entire claim and for the transfer to Deep Rock of the stock and note of the Refining Company under the Plan of Reorganization which has been approved.

e. The offer of compromise is conditioned expressly upon a Plan of Reorganization satisfactory to Standard being confirmed on or before February 8, 1937, and upon the sustaining of the confirmation on appeal. Standard has approved the plan which was confirmed (Vol. I, p. 425).

The Receivers (Vol. II, pp. 276-290), and later the Trustee (Vol. I, p. 66), had originally opposed the Standard claim on the following grounds:

a. That the lease from Deep Rock Oil and Refining Company to Deep Rock was invalid and the rentals charges thereunder were improper.

b. That the separate corporate entity between Standard and Deep Rock should be disregarded.

c. That various items of charges by Standard to Deep Rock were improper or excessive.

The Trustee at first urged that the claim should be denied in its entirety (Vol. II, pp. 381, 388, 711).

A reference of the claim was made to Honorable Preston C. West, as Special Master, and extensive hearings (Vol. II, pp. 1-376) were conducted throughout 1934 and 1935 (Vol. I, p. 24). The Taylors (predecessors of the petitioners herein) also objected to the claim "for the reasons and in the manner and extent set forth by the objections filed to the said claim in behalf of the Trustee" and for the further reason that the advances by Standard to Deep Rock were alleged to be mere bookkeeping entries (Vol. I, pp. 97-98).

The Trustee declined to discuss any settlement until the proofs of the Standard claim before the Special Master had been taken (Vol. II, p. 398).

After the testimony was in, the Trustee finally came to the conclusion that, unless as a result of the application of the corporate "instrumentality rule" the view were taken that Standard and the Debtor were one and the same, at least a considerable portion of Standard's claim could be sustained, leaving the balance in question (Vol. II, pp. 698-706).

Judge Ramsey, the Trustee's counsel, testified that the important factual and legal issues were doubtful and debatable (Vol. II, pp. 379-380, 385, 388, 698-706).

2. The first compromise offer had been made by Standard to the Trustee and was accepted by the Trustee subject to the approval of the Court (Vol. I, p. 105). This offer provided for a compromise of the Standard claim at approximately $5,000,000. of which $3,500,000. would rank on the parity with the notes of the Debtor.

3. The Special Master never filed a report on the merits of the Standard claim (Vol. II, p. 407), but he recommended the approval of the first offer of compromise (Vol. I, p. 202).

4. The District Judge declined to sustain the Master's recommendation that the first offer of compromise be approved because he was not satisfied with the treatment of the preferred stockholders, as compared with that of Standard, under the Plan of Reorganization then pending before him (Vol. II, pp. 406-410).

5. The District Judge ordered the Reorganization Committee to submit an amended plan of reorganization "and as a basis" and integral part thereof a new offer by Standard for the compromise of its claim against the Debtor (Vol. I, pp. 246, 255, 256, 257, 258, 276). The new offer of compromise was to be made by Standard "under the authority of the United States Court for the District of the State of Delaware."

6. The Trustee and his counsel found that the new offer of compromise eliminated every debatable item (Vol. II, pp. 389, 562, 563). The Circuit Court of Appeals so found. 96 F. (2d) 693, 703 (Vol. I, p. 493).

The Allocation of Securities Under the Plan.

A. The Appraisal.

The plan was based upon an analysis of the value of the assets of the Debtor as a going concern. In December, 1936, the Trustee filed an appraisal of the physical properties of the Debtor, including the property of the Refining Company (Vol. I, pp. 358-360); the Trustee certified the appraisal as true and correct (Vol. I, p. 358), and testified with respect to the value of the property of the Debtor (Vol. II, pp. 514-531).

Attached to the appraisal is a consolidated balance sheet of the Debtor and subsidiaries, including the assets of the Refining Company (Vol. I, p. 361). This balance sheet gives effect to the appraisal by the Trustee of the real estate, oil and gas leases and other physical properties of the Debtor, its subsidaries, and the Refining Company. It also reflects fully all the other assets of the Debtor, its subsidiaries and the Refining Company and the several categories of indebtedness. The balance available for the payment of the $10,000,000. of 6% convertible gold Notes of the Debtor, the claim of Standard, interest on both, administration expenses, other claims and contingent liabilities, and for stockholders, is $16,847,378.37. The Court found and declared as a fact that the value of the properties of the Debtor does not exceed $17,000,000. (Vol. I, pp. 371-372).

An eminent and independent expert was retained to review the Trustee's appraisal (Vol. II, p. 452). This independent expert was a Mr. O. J. Berend (Vol. II, pp. 472-474). Mr. Berend testified that he had studied the Trustee's

evaluation of the fixed assets of the Debtor and that there were available to him detailed working papers and engineers' reports and computations used in making up the appraisal (Vol. II, p. 474). Me Berend was familiar with the property and also checked the methods used in reaching the appraisal of the fixed assets (Vol. II, pp. 474-476). He testified that the producing oil properties were evaluated after applying "the best known methods and practices in the oil business at this time." (Vol. II, p. 475). The producing properties were analyzed from the point of view of "the future income of these properties which was then ascribed as the value of those properties", (Vol. II, p. 475). Valuations were based on estimated life, using the depreciation rates customarily used in the business and allowed by the Internal Revenue Department (Vol. II, p. 476). Mr. Berend testified that these methods were fair, accurate and an enlightened way to appraise the property (Vol. II, p. 476). He testified that in his opinion the Trustee's appraisal of the fixed assets "is a reasonable, fair valuation to a going concern * * * One that will continue to operate these properties and make the best of them" (Vol. II, p. 477). If evaluated for purpose of liquidation and sale, the value would be substantially lower (Vol. II, p. 477). On cross-examination the witness testified that the value might be from ten to twenty-five percent lower (Vol. II, p. 505).

The expert was an independent person—he had never had any relationship with Byllesby, Standard, the Reorganization Committee, the Debtor or the Trustee (Vol. II, p. 478). The expert testified on cross-examination that reproduction cost was also considered in the preparation of the appraisal (Vol. II, p. 499).

Mr. Greis, the Trustee, was called as a witness on the issue of valuation. He testified as to his great experience, since 1907, in the oil business (Vol. II, p. 514). In the

course of his experience in the oil business he had bought and developed "very many million dollars' worth of oil land" (Vol. II, p. 514); he was familiar with the trend of the industry (Vol. II, p. 515). Mr. Greis described the speculative character of the industry (Vol. II, pp. 515-519); he also testified as to the thorough analysis of hundreds of items which went to make up his appraisal (Vol. II, pp. 526-531). He testified that earning power, cost, reproduction cost, obsolescence and conditions of the industry were all taken into consideration in reaching his appraisal (Vol. II, pp. 528-531).

Mr. Smith, petitioners' sole witness on the issue of value, testified that he had no knowledge about the value of the oil production properties (Vol. II, p. 556); that he was merely making a mathematical calculation on an assumed hypothesis.

The District Judge took into full consideration the importance of earnings as an element of valuation (Vol. II, p. 528). He also had before him the earnings and operating records of the Debtor for the three and a half years of operation under court supervision (Vol. I, p. 401; Vol. II, p. 738).

B. Division of Securities.

The District Judge in considering the plan and the fairness of the allocation of securities thereunder was extremely solicitous for the position of the preferred stockholders; he insisted on provision being made for the preferred stock (Vol. II, pp. 406, 410); and he rejected the first offer of compromise because in his opinion that offer combined with the original plan did not make adequate provision for the preferred stockholders (Vol. II, pp. 406-407). When he approved the amended Plan of Reorgani-

zation, after a careful study of the allocation of the stock in the reorganized company (Vol. II, pp. 568-569), he was satisfied with its provision for the preferred stockholders and adjudged that the Plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders of the Debtor (Vol. I, p. 381).

IV.

SUMMARY OF ARGUMENT.

The compromise approved by the District Court should not be disturbed. The District Judge properly exercised his discretionary power to approve a compromise of debatable issues of fact and law and in doing so acted for the best interests of the estate, its creditors and the preferred stockholders.

The approval of the compromise by the District Judge followed a thorough investigation of all the facts relating to the Standard claim, the approval of the compromise by the Special Master and the approval of the compromise by the Trustee and his counsel.

The doctrine of res adjudicata did not bar the Court from approving the compromise; the first offer which it rejected differed from the second offer, which it approved, in respect to the standing of the claim as compared with the claims of the noteholders, and with respect to the consideration for which the claim was to be discharged under the Plan of Reorganization.

Whether Standard was entitled to the allowance of its claim on the merits is not the issue before this Court. The issue is whether Standard's claim in its entirety was so obviously invalid that the District Judge committed a gross abuse of judicial discretion in approving the compromise.

The Record does not sustain petitioners' contention that the separate corporate entity of Deep Rock should be disregarded and the entire claim of Standard disallowed. The disregard of the corporate fiction is a practice resorted to in order to reach an equitable result. The disregard of the corporate fiction in the instant case would reach an inequitable result—the unjust enrichment of the preferred stockholders of the Debtor at the expense of Standard, its creditors and stockholders.

The Record does not sustain the charges of spoliation and looting which so loosely have been levelled at Standard by the petitioners. On the contrary, the Record proves that Standard advanced to Deep Rock much more in cash than it ever recovered from Deep Rock, and the disallowance of the claim of Standard would unjustly enrich the preferred stockholders of the Debtor at the expense of the creditors and stockholders of Standard.

The amount of the compromise was reasonable. The items which make up the compromise are unquestioned by the Trustee and his counsel who made the objections to the Standard claim which petitioners have adopted. All disputed items have been eliminated.

The District Court's decision as to the fairness of the plan and the allocation of the securities thereunder was amply supported by the evidence. The plan and the compromise were overwhelmingly approved by informed noteholders, by stockholders, and by a District Judge who had for almost four years observed carefully the operation of the Debtor.

We respectfully submit that under the law and on the Record the respondents are entitled to an affirmance of the decision of the Circuit Court of Appeals for the Tenth Circuit, and to an end to this long litigation.

V.

ARGUMENT.

A. THE APPROVAL OF THE COMPROMISE BY THE DISTRICT JUDGE WAS A PROPER EXERCISE OF DISCRETIONARY POWER.

1. While Section 77B of the Bankruptcy Act, as amended, contains no specific grant of a power to compromise claims, it is clear that a trustee appointed thereunder has power to compromise claims against the estate of the Debtor with the approval of the court. (11 U. S. C. A., Sec. 50, Sec. 207 (a)(c).

In re Prudence Co., 98 F. (2d) 559 (C. C. A. 2, 1938);

In re Burns Bros., 14 F. Supp. 910 (S. D. N. Y. 1936);

In re McCrory Stores Corporation, 14 F. Supp. 739 (S. D. N. Y. 1935);

In re Paramount Publix Corporation, 7 F. Supp. 988 (S. D. N. Y. 1934);

See 2 Gerdes, Corporate Reorganization under Section 77B of the Bankruptcy Act (1936) Section 754.

2. It is also well established that the approval of a compromise by the District Court is a discretionary matter and an order of approval will be reversed by a reviewing court only if there has been a clear abuse of discretion.

In re Riggi Bros. Co., 42 F. (2d) 174 (C. C. A. 2, 1930) cert. den. 282 U. S. 881, 75 L. Ed. 777 (1931);

Pullman Couch Company v. *Eshelman*, 1 F. (2d) 885 (C. C. A. 4, 1924) cert. den. 266 U. S. 631, 69 L. Ed. 478 (1925);

In re Orinoco Corp., 269 Fed. 344 (C. C. A. 6, 1920) cert. den. 256 U. S. 694 65 L. Ed. 1175 (1921).

The action of the District Court in approving a compromise is presumptively right.

Pullman Couch Co. v. *Eshelmann, supra;*
In re Riggi Bros. Co., supra.

Thus, the real issue presented by petitioners is whether the claim of Standard was so clearly invalid on the facts and on the law that there was no substantial reason for approval of the compromise.

3. The offer of compromise was properly before the court.

The petitioners assert (Pet. Br. p. 80) that the offer of compromise was not properly presented because it was submitted in the form of an offer by Standard without a petition on the part of the Trustee.

Title 11 U. S. C. A., Sec. 50 (Section 27 (a) of the Bankruptcy Act as amended) provides that:

> "The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate."

Title 11 U. S. C. A., Sec. 94 (a) (Sec. 58 (a) of the Bankruptcy Act as amended) provides that creditors shall have at least ten days notice of the proposed compromise of any controversy.

Section 50 confers authority upon a trustee to compromise a controversy in a bankruptcy proceeding. It is not in any sense a procedural section. General Order XXX III (11 U. S. C. A. Sec. 53) provides that whenever a trustee applies for authority to compound and settle a controversy, his application "shall clearly and distinctly set forth the subject matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise". This general order prescribes a rule of practice applicable to cases where *a trustee* solicits the approval of a compromise; it does not confer jurisdiction on the bankruptcy court or authority upon a trustee.

> *L. M. Axle Co.* v. *Wells*, 3 F. (2d) 581, 582 (C. C. A. 6, 1925).

The jurisdiction and authority to compromise claims against an estate are derived from the Bankruptcy Act and from the inherent equity powers of the bankruptcy court. The jurisdiction to approve a compromise may be exercised by the Court regardless of who asks for the approval.

> Title 11 U. S. C. A. Sec. 50, Sec. 207(a)(c);
>
> *West* v. *Radio-Keith-Orpheum*, 68 F. (2d) 869 (C. C. A. 2, 1934);
>
> 2 Gerdes, Corporate Reorganization under Section 77B of the Bankruptcy Act, §754.
>
> High, Law of Receivers, 4th ed. (1910), §§177; 336.
>
> 48 Harvard Law Review 1017 (1935).

The order appointing the Trustee conferred upon him all the powers of an equity receiver. (Vol. I, p. 49).

The first offer of compromise was made by Standard to the Trustee (Vol. I, pp. 102-105), who accepted it subject to the approval of the District Court. The amounts of the first and second offers of compromise were the same, but the second offer, as we have shown, was more favorable to noteholders and preferred stockholders of the Debtor in a number of respects. The second offer was submitted to the District Court in the form of an offer of compromise on the part of Standard (Vol. II, pp. 731, 734).

It is stipulated in the Record (Vol. I, pp. 25-26) that the publication and mailing of notice prescribed in certain orders of the District Court was duly effected. These orders include an order dated May 16, 1935 setting for hearing on June 3, 1935 the first offer of compromise of the claim of Standard and the report of the Special Master thereon; an order entered May 17, 1935 directing the Trustee to give notice by mail and publication of the hearing on the first proposed compromise of the Standard claim and the report of the Special Master thereon; an order entered August 12, 1935 setting for further hearing on September 23, 1935 the first offer of compromise of the claim of Standard and the report of the Special Master thereon; and an order entered November 9, 1936 directing the hearing of the compromise of the claim of Standard for December 12, 1936.

Standard filed its second offer of compromise pursuant to leave of the District Court (Vol. I, p. 299) and pursuant to authority conferred on Standard by the United States District Court for the District of Delaware by order of November 2, 1936 (Vol. I, p. 298). The notice of hearing scheduled for December 12, 1936 was given on November 10, 1936 (Vol. I, p. 296).

The Record discloses that the Trustee, through his counsel, fully approved the compromise offer, recommended its acceptance, and stated in detail his reasons therefor (Vol. II, pp. 561-564). When the second offer of compromise was before the District Court, there had already been submitted to it and to the creditors and stockholders of the Debtor the report of the Special Master on the first offer of compromise and the petition of the Trustee with respect to the first offer of compromise. The Trustee in August 1935 (Vol. II, pp. 698-706) had transmitted to the creditors and stockholders of Deep Rock a full report of the subject matter of the controversy, the proposed compromise and his reasons for regarding the compromise in the best interests of the estate. The "subject matter of the controversy, and the reasons why the trustee" thought it "proper and most for the interest of the estate that the controversy should be settled," were thus before the Court and the creditors and stockholders of Deep Rock in great detail. See *In re National Public Service Corporation*, 68 F. (2d) 859, 862 (C. C. A. 2, 1934) cert. den. 292 U. S. 641, 78 L. Ed. 1492 (1934).

The order approving the compromise "authorized and directed" the Trustee to accept the proposal and compromise (Vol. I, p. 393).

4. The order of the District Court disapproving the first compromise agreement was not an adjudication of any matter now pending before the Court.

Petitioners contend (Pet. Br. pp. 73, 74, 79) that the denial by the District Judge of the first compromise offer in 1935 barred the District Judge from approving the second compromise offer in 1936.

That the doctrine of res adjudicata can have no application in this case is evident from the following facts:

a. Standard's first offer of compromise differed from the second offer of compromise in the following respects:

(1) Standard's first offer of compromise was in no way tied into or made an integral part of a plan of reorganization, whereas Standard's second offer of compromise is inseparably interrelated with the plan of reorganization and dependent upon it (Vol. II, pp. 760, 776; Vol. I, p. 104).

(2) The claim of Standard under the first offer of settlement was to rank on a parity to the extent of approximately $3,500,000. with the $10,000,000. principal amount of Notes of Deep Rock; the balance of approximately $1,500,000. was to be subordinated to the claims of noteholders and all other creditors of Deep Rock (Vol. I, p. 106). It will be noted that even the subordinated balance was to enjoy seniority over the preferred stock. Under the second offer of compromise, related as it is to the plan of reorganization, the entire amount of the Standard claim receives treatment under the plan on a parity with the preferred stockholders, although the offer of compromise provides that the claim of Standard as compromised is to be allowed on a parity with the Notes to the extent of $1,500,000., and the balance is to be subordinated to the claims of noteholders and all other creditors.

b. It is obvious from a reading of the record (Vol. II, pp. 406-407) that what the District Judge disapproved and adjudicated when he was considering the first offer of compromise was the participation which Standard would be entitled to receive under the first plan of reorganization then pending before the court if the first compromise offer were accepted. The District Judge clearly was not passing on the merits of the claim (Vol. II, p. 407). Petitioners recognized that fact when after the conclusion of the hearings on the first offer of compromise they moved for an order directing a hearing on the merits (Vol. I, pp. 245-246).

c. The contention that the disapproval of the first offer of compromise was res adjudicata and barred consideration of the second offer because similar gross amounts were involved would impose fantastic and impossible limitations on the very broad jurisdictional powers which courts of bankruptcy have over the allowance and disallowance, consideration and reconsideration of claims. 11 U. S. C. A., Sec. 11 (2); *in re Hamilton Automobile Co.*, 209 Fed. 596, 599 (C. C. A. 7, 1913). The order of the District Court sustaining the objections to the Master's Report filed by the Taylors and disapproving the compromise agreement (Vol. I, pp. 244-245) did not constitute any adjudication that a compromise for the aggregate amount of $5,000,000.—regardless of its terms and conditions—was forever barred.

B. The Claim of Standard Was So Clearly Valid as to Afford a Substantial Basis for a Compromise.

1. "Whether Standard was entitled to the allowance of its claim on the merits is not the issue here presented. That issue was never passed on by the Special Master or the court. The real issue is whether the plan meets the requirement of Section 77B of the Bankruptcy Act (11 U. S. C. A., par. 207 (b) (e) (f) and is fair and equitable, and whether the court abused its discretion in approving the offer of compromise". 96 F. (2d) 693, 703; Vol. I, p. 492.

It is the essence of compromise that a decision on the merits is unnecessary.

In re Burns Bros. Co., supra;

In re Riggi Bros. Co. Inc., supra.

A reviewing court, in reviewing a compromise does not inquire into the outcome of the litigation on its merits;

its inquiry is limited (as the Circuit Court of Appeals in this case stated) to "whether the issues of fact and law were reasonably debatable". 96 F. (2d) 693, 703. (Vol. I, p. 492).

Petition of Stuart, 272 Fed. 938, 941 (C. C. A. 6, 1921);

MacDonald v. *Aetna Indemnity Co.,* 88 Conn. 571, 92 Atl. 154 (1914);

Ellis v. *Citizens Bank of Carlisle,* 218 Iowa 750, 251 N. W. 744 (1933);

Gordon v. *Hartford Sterling Co.,* 319 Pa. St. 174, 179 Atl. 234 (1935);

Knaffl v. *Knoxville Banking & Trust Co.,* 139 Tenn. 240, 201 S. W. 775 (1918).

2. The probable validity of the Standard claim.

(a) The Circuit Court of Appeals expressly found that the compromise eliminates all "doubtful and debatable items", in the Standard claim, 96 F. (2d) 693, 703 (Vol. I, p. 493). The amount of the settlement figure, as will be recalled, consists of two items: (a) $2,376,076.31, the principal amount paid by Standard since February 24, 1928 to third parties not affiliated with Standard (after crediting Deep Rock with all payments made by it to or for the benefit of Standard within such period), plus simple interest at 5% per annum to February 28, 1933, the date of the commencement of the equity receivership proceedings, plus (b) $1,585,485.18, being the cost to Standard of the Refining Company properties, less rentals charged by the Refining Company to Deep Rock prior to the 1928 settlement, and interest to February 28, 1933 (Vol. II, p. 704). Deep Rock under the compromise is to receive all the outstanding shares of capital stock of the Refining Company

and an assignment of all the claims of Standard against the Refining Company (Vol. II, pp. 732-733).

No other items are included in the compromise offer (Vol. I, pp. 105-107, 238).

The non-debatable character of the claim to which Standard would be entitled as a result of the transfer to Deep Rock of the shares of stock of the Refining Company and the assignment to Deep Rock by Standard of its claim against the Refining Company is conceded by Petitioners in the note appearing on the chart at page 70-A of Petitioners' Brief.

Not only the finding of the Circuit Court of Appeals, to which we have referred, but also the Record shows beyond dispute that no debatable item in the Standard claim is included in the compromise offer (Vol. II, pp. 389, 562, 563). The Trustee of the Debtor, in a statement to the creditors and stockholders of Deep Rock, stated that "Standard's offer of compromise eliminates disputed items" (Vol. II, p. 704).

(b) The "instrumentality rule" does not clearly require the invalidation of the Standard claim.

(1) The so called "instrumentality rule" is not a fixed and clear formula which can be applied with exactitude to the definition of legal rights, but is "still enveloped in the mists of metaphor." *Berkey* v. *Third Avenue Ry. Co.*, 244 N. Y. 84, 91, 155 N. E. 58, 61 (1926).

(2) The facts with respect to the Standard claim do not call for an application of the instrumentality rule. The instrumentality rule has been invoked in cases where creditors have been damaged by a parent corporation which has exercised its control over its subsidiary in such manner that it itself has either disregarded the separate

juridical entities by constituting the subsidiary a department of its own business or by commingling of assets. A recent text by Elvin R. Latty, *Subsidiaries and Affiliated Corporations (1936)*, recognizes that in reality the instrumentality rule is invoked by Courts for the purpose of reaching an equitable result based on the facts of the particular case (pp. 191, 220).

Essentially the application of the instrumentality rule constitutes a denial to a stockholder of immunity from liability "as the justice of the case may require". See *Chicago M. & St. P. Ry.* v. *Minneapolis Civic Association*, 247 U. S. 490, 501, 62 L. Ed. 1229, 1237 (1918).

The cases cited in Petitioners' Brief (pp. 24-27) are principally cases where the corporate entity was disregarded because of statutory violations[1]; or are cases where actual knowledge of one corporation was imputed to a parent corporation[2]; or are cases where a departmental relationship existed[3]; or cases where a *creditor* was granted recourse against a parent (or affiliate) through the application of the "instrumentality rule" because of an agency relation-

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[1] e.g. *U. S.* v. *Reading Co.*, 253 U. S. 26, 64 L. Ed. 760 (1920); *U. S.* v. *D. L. & W. R. Co.*, 238 U. S. 516, 59 L. Ed. 1438 (1915); *U. S.* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, 55 L. Ed. 458 (1911).

[2] e.g. *McCaskill Co.* v. *U. S.*, 216 U. S. 504, 54 L. Ed. 590 (1910); *Hart Steel Co.* v. *Railroad Supply Co.*, 244 U. S. 294, 61 L. Ed. 1148 (1917); *Westinghouse Elec. & Mfg. Co.* v. *Allis Chalmers Co.*, 176 Fed. 362 (C. C. A. 3, 1910).

[3] e.g. *Davis* v. *Alexander*, 269 U. S. 114, 70 L. Ed. 186 (1925); *Chicago, M. & St. P. Ry.* v. *Minn. Civ Assn.*, 247 U. S. 490, 62 L. Ed. 1229 (1918); *Centmont Corp.* v. *Marsch*, 68 F. (2d) 460 (C. C. A. 1, 1933) cert. den. 291 U. S. 680, 78 L. Ed. 1068 (1934); *Baker Motor Vehicle Co.* v. *Hunter*, 238 Fed. 894 (C. C. A. 2, 1916) sales agency; *Bishop* v. *U. S.*, 16 F. (2d) 410 (C. C. A. 8, 1926) subsidiary operated as a department; *Pennsylvania Canal Co.* v. *Brown*, 235 Fed. 669 (C. C. A. 3, 1913) cert. den. 242 U. S. 646, 61 L. Ed. 543 (1917) department; *The Willem Van Driel, Sr.*, 252 Fed. 35 (C. C. A. 4, 1918) express assumption of liability.

ship, or the presence of elements of fraud or estoppel[4]; or cases where, by the application of a corollary of the instrumentality rule, a parent corporation was denied a claim against an insolvent subsidiary "instrumentality" on a parity with the claims of third parties.[5] In none of the cases cited by petitioners in their brief was the corporate entity disregarded at the instance of stockholders. The provisions of Section 77B of the Bankruptcy Act preclude a description of preferred stockholders as creditors. Under the provisions of Section 77B of the Bankruptcy Act as amended (11 U. S. C. A. 207 (b)) a creditor is defined as the holder of a claim against a Debtor; and claims are defined to include debts and securities *other than stock*. Preferred stockholders are not creditors.

In an article appearing in 39 Yale Law Journal, 193 (1929), Messrs. William O. Douglas and C. M. Shanks observed that (pp. 217-218):

"From the foregoing it will be seen that where contractual rights are concerned the contents of any

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[4]e.g. *Maloney Tank Mfg. Co.* v. *Mid Continent Petroleum Corp.*, 49 F. (2d) 146 (C. C. A. 10, 1931); *Luckenbach S. S. Co.* v. *W. R. Grace & Co.*, 267 Fed. 676 (C. C. A. 4, 1920) cert. den. 254 U. S. 644, 65 L. Ed. 454 (1920); *In re Kentucky Wagon Manufacturing Co.*, 71 F. (2d) 802 (C. C. A. 6, 1934) cert. den. 293 U. S. 612, 79 L. Ed. 701 (1934); *American Nat. Bank* v. *National Wall Paper Co.*, 77 Fed. 85 (C. C. A. 8, 1896) estoppel; *Interstate Tel. Co.* v. *Baltimore & O. Tel. Co.*, 51 Fed. 49 (D. C. Md. 1892) aff'd 54 Fed. 50 (C. C. A. 4, 1893) fraudulent conveyance; *Dillard & Coffin Co.* v. *Richmond Cotton Oil Co.*, 140 Tenn. 290, 204 S. W. 758 (1918) estoppel.

[5]e.g. *Gray* v. *Meehan*, 54 F. (2d) 223 (C. C. A. 1, 1931), estoppel; *Finch* v. *Robie*, 12 F. (2d) 360 (C. C. A. 8, 1926), fraud; *In re Burntside Lodge, Inc.*, 7 F. Supp. 785 (D. C. Minn. 1934), claim of practically sole stockholders for compensation for their services; *Bank of United States* v. *Cuthbertson*, 67 F. (2d) 182 (C. C. A. 4, 1933) cert. den. 291 U. S. 665, 78 L. Ed. 1056 (1934) bonds claimed upon issued to controlling stockholder without consideration; *Henry* v. *Dolley*, 99 F. (2d) 94 (C. C. A. 10, 1938), holding out to creditors that indebtedness to parent would not be permitted to prejudice them; also commingling of assets and business; *In re Ostego Waxed Paper Co.*, 14 F. Supp. 15 (W. D. Mich. 1935) corporate records unexplainedly lost; parent company had incorporated a division of its own business and thereafter continued to operate it precisely as before incorporation.

rules which may be stated to help in the work of prediction are but shifting and faintly outlined at the best, themselves uncertain subjects of predictability. This much, however, may be said:

"(a) The adequacy or inadequacy of the capital and financial arrangements of the subsidiary weigh heavily in the determination of liability or non-liability of the parent, greatly over-shadowing the other so-called indicia of identity between the companies such as common officers, directors, office and lack of separate books.

"(b) Direct intervention or intermeddling by the parent in the affairs of the subsidiary and more particularly in the transaction involved, to the disregard of the normal and orderly procedure of corporate control carried out through the election of the desired directors and officers of the subsidiary and the handling by them of the direction of its affairs, seems to have been determinative in some cases to holding the parent liable.

"(c) Nevertheless, in many cases direct intervention seems to have had no potency in swaying the courts. After considering the various facts indicating identity of the corporations and direct intervention they have decided according to their subjective idea of 'avoiding an inequitable result.'

"As yet the subject is covered with a 'mist of metaphors.' Until the courts stop to analyze with more particularity the factors motivating their decisions before lapsing into phrases such as 'alter ego' or 'adjunct' or 'instrumentality' there seems little hope of making prediction more certain than the foregoing."

A brief analysis of the Record will show that the proof does not justify the application of the instrumentality rule to Standard's claim so as to result in a denial of the claim.

(a) *Deep Rock Was Adequately Capitalized.*

As we have shown the initial capital stock issue of Deep Rock amounted to $11,200,000 (Vol. II, pp. 10, 18, 636)

of which $6,000,000 was issued for property and the balance of $5,200,000 for cash. In 1921, 50,000 shares of preferred stock and 80,000 shares of common stock were surrendered to Deep Rock, but no capital was withdrawn (Vol. II, pp. 11, 630-634).

That the initial stock capital was adequate for all requirements of the Debtor is evident from the fact that at the end of 1919 the net indebtedness on open account from Deep Rock to Standard was only $4,157.59, and that at the end of 1920 the balance in favor of Standard in the open account was only $472.79 (Vol. I, p. 62).

In addition to the issue of capital stock above described, Deep Rock in 1919 also issued mortgage bonds as partial consideration for the purchase of Deep Rock's physical properties. (Vol. II, p. 636). The balance of the purchase price was paid in cash and stock.

None of the cases in which the instrumentality rule has been applied because of inadequate capital is at all comparable to this case. They are all cases where at the inception of corporate existence the stock capital was inadequate for the subsidiary's needs.

In *Luckenbach S. S. Co.* v. *W. R. Grace & Co.*, 267 F. 5 (C. C. A. 4, 1920) cert. den. 254 U. S. 644, 65 L. Ed. 4 (1920) the subsidiary corporation was organized to operate steamships owned by the parent corporation, with only a nominal capital of $10,000; the court found in that case a purpose on the part of the stockholder of the parent company to insulate the assets of the parent company from liabilities arising out of the operation of its assets. The court held the parent liable in an action involving breach of contract where the parent's liability was more than $1,300,000.

In *Maloney Tank Manufacturing Co.* v. *Mid Contine Petroleum Corporation,* 49 F. (2d) 146 (C. C. A. 1 1931), the business of the parent company was don through a sales corporation which was financially unabl to take care of the business and which had either no cap tal or a purely nominal capital. In that case the sale corporation was also found to be an agency of the tan company.

In *Joseph R. Foard Co.* v. *State of Maryland,* 219 F 827 (C. C. A. 4, 1914) the parent company carried on large stevedoring business through a subsidiary capitalize at $2,000. The subsidiary handled no funds, and its profit were all retained by the parent company as a charge fo managing the business.

In *Clere Clothing Co.* v. *Union Trust & Savings Bank,* 224 F. 363 (C. C. A. 9, 1915) there was a clear interming gling of the affairs and business of the two companies, and the claim of the parent against the subsidiary arose as a result of the transaction in which the subsidiary acquired the only asset which it ever possessed. A clear agency relationship existed.

In *In re Kentucky Wagon Manufacturing Co.,* 71 F. 2d 802 (C. C. A. 6, 1934) cert. den. 293 U. S. 612, 79 L. Ed. 701 (1934) the subsidiary had no capital whatsoever and was merely a name. The facts as stated in the decision of the District Court (3 F. Supp. 958, 967, W. D. Ky. 1932) disclose that it had been held out to creditors that the parent would be responsible for the debts of the subsidiary. The District Court also found that an agency relationship existed in that case.

Deep Rock's capitalization, on the other hand, was large enough to enable it to earn a net profit after providing

for all operating expenses, taxes and interest charges but before depreciation, depletion and amortization, of $2,183,394.92 in 1919, $2,109,914.34 in 1920, and $759,305.93 in 1921, (Vol. III, pp. 117, 169).

(b) *There Was No Commingling of the Assets of Deep Rock with the Assets of Standard.*

One of the principal reasons for the disregard of the corporate fiction and the denial of immunity to a stockholder is that the assets of the stockholder and corporation have been commingled. The Circuit Court of Appeals in this case found that the assets of Standard and the Debtor were not commingled, 96 F. 2d 693, 706; Vol. I, p. 498. The Trustee's counsel stated that after "every item in this account of the Standard has been investigated" the Trustee found that "the assets or property of Standard and Deep Rock were never commingled" (Vol. II, pp. 561-562).

(c) *Deep Rock Was Never Operated as a Department of Standard; the Separate Corporate Entities Were Always Maintained.*

As we have shown Deep Rock was not organized as a department of Standard (Vol. II, p. 561).

Deep Rock was operated and managed by its own officers and employees (Vol. II, pp. 193, 303). The Special Master found that "throughout the transactions here involved, the separate corporate entity of each of the respective corporations concerned was at all times maintained". (Vol. I, p. 175). Deep Rock kept its own books and distinct corporate records and observed all the formalities of corporate organization and existence (Vol. II, pp. 387, 703). The Circuit Court of Appeals in this case made such a finding. 96 F. (2d) 693, 706. Deep Rock maintained its own offices under the control of its own officers (Vol. II,

p. 5) and held its own directors' meetings (Vol. I, pp. 1
480-481; Vol. II, p. 703). The operating officers of De
Rock had absolute freedom in the disbursement of De
Rock's moneys and in the conduct of its oil busines
Standard did not direct the purchase or sale of propert
leases or oil, or the production processes of Deep Roc
(Vol. II, pp. 40, 41, 231).

In support of their contention that Deep Rock was b
a department of Standard, petitioners point to the owne
ship by Standard of 95% to 98% of the Deep Rock com
mon stock (Pet. Br. p. 33); to Standard's exercise of it
voting rights in electing directors of Deep Rock (Pet. Br
p 33); to the interlocking officerships and directorates be
tween Deep Rock and Standard (Pet. Br. p. 33); to the
fact that Standard acted as banker and fiscal agency for
Deep Rock in the procuring of funds for Deep Rock (Pet.
Br. pp. 39-40); to the fact that officers of Deep Rock who
happened also to be officers of Standard were consulted on
all important expenditures of moneys by Deep Rock
(moneys which Standard was requested to lend to Deep
Rock) (Pet. Br. p. 35); to the fact that Standard kept in
frequent and in "daily touch" with all the affairs of Deep
Rock as they affected the financial condition of Deep Rock
(Pet. Br. p. 35); that Deep Rock had some officers who
countersigned checks without being thoroughly familiar
with the transactions with respect to which the checks were
issued (Pet. Br. p. 36); that Standard advanced numerous
disbursements for the benefit of Deep Rock, including such
items as corporation qualifying fees, revenue stamps on
securities, registrars' and transfer agents' fees and ex-
penses (Pet. Br. p. 37); to the fact that Standard lent
Deep Rock money with which to meet its interest and sink-
ing fund obligations and its indebtedness to public security
holders (Pet. Br. p. 37); to the fact that Standard advanced

to Deep Rock the cash with which to make payments of dividends to the public holders of Deep Rock preferred stock (Pet. Br. p. 37); and to the fact that Standard published reports of its consolidated balance sheet and earning statement, including Deep Rock in the consolidation (Pet. Br. p. 39).

The sum total of all these contentions does not constitute Deep Rock a department of Standard, and the Record amply sustains the finding of the Circuit Court of Appeals (96 F. (2d) 693, 697, Vol. I, pp. 480- 481) that Deep Rock was not operated as a department of Standard.

In re Fox West Coast Theatres, 88 F. (2d) 212, 227-228, 229 (C. C. A. 9, 1937);

Menihan v. *Commissioner,* 79 F. (2d) 304, 305, 306 (C. C. A. 2, 1935) cert. den. 296 U. S. 651, 80 L. Ed. 463 (1935);

Shepherd v. *Banking & Trust Co., of Jonesboro,* 79 F. (2d) 767, 769 (C. C. A. 6, 1935), cert. den. 297 U. S. 718, 80 L. Ed. 1002 (1936);

Gillis v. *Jenkins Petroleum Process Company,* 84 F. (2d) 74, 79, 80 (C. C. A. 9, 1936);

Greenbaum v. *Lehrenkrauss Corp.,* 73 F. (2d) 285, 286 (C. C. A. 2, 1934);

Exchange National Bank v. *Meikle,* 61 F. (2d) 176, 179, 180 (C. C. A. 9, 1932);

Texas Company of Mexico, S. A., v. *Roos,* 43 F. (2d) 1, 15 (C. C. A. 5, 1930), cert. den. 282 U. S. 902, 75 L. Ed. 794 (1931);

Owl Fumigating Corporation v. *California Cyanide Co.,* 24 F. (2d) 718, 720 (D. C. Del. 1928), affd. 30 F. (2d) 812 (C. C. A. 3, 1929);

City of Holland v. *Holland City Gas Co.*, 257 F. 679, 684, 685 (C. C. A. 6, 1919);

Parent and Subsidiary Corporations (1931) Powell, p. 10.

Cf. *United States* v. *Reading Company*, 253 U. S. 26, 62, 63, 64 L. Ed. 760 (1919); *Peterson* v. *Chicago, R. I. & P. Ry. Co.*, 205 U. S. 364, 390, 393, 51 L. Ed. 841 (1907); *Pullman's Palace Car Co.* v. *Missouri Pac. Ry. Co.*, 115 U. S. 587, 6 S. Ct. 194, 29 L. Ed. 499 (1885); *Kentucky Electric Power Co.* v. *Norton Coal Mining Co.*, 93 F. (2d) 923, 926 (C. C.A. 6, 1938); *Commerce Trust Co.* v. *Woodbury*, 77 F. (2d) 478 (C. C. A. 8, 1935) cert. den. 296 U. S. 614, 80 L. Ed. 435 (1935); *Bee Building Co.* v. *Daniel*, 57 F. (2d) 59, 61 (C. C. A. 8, 1932).

(d) *The Refining Company Transaction Does Not Invalidate the Standard Claim.*

It will be recalled that the Refining Company transaction is in effect rescinded by the compromise. However, petitioners seek the disallowance of the entire claim of Standard on the mistaken notion that this one transaction so taints the relationship between Deep Rock and Standard as to make Deep Rock a Standard instrumentality. Petitioners, conscious of the fact that there was no fraud perpetrated by Standard against Deep Rock or against the preferred stockholders (96 F. (2d) 693, 707; Vol. I, pp. 499-500), seek by reference to the Refining Company transaction to meet the requirement expressed in some of the cases relating to the instrumentality rule that in the absence of fraud the separate corporate entity will be observed.

Peckett v. *Wood*, 234 Fed. 833 (C. C. A. 3, 1916); *Duffy* v. *Treide*, 75 F. (2d) 17, 20 (C. C. A. 4, 1935).

In the last named case, the Court said:

> "To justify subordination of the [parent's] claim to the claims of the other creditors of the [subsidiary] it would be necessary to show not only largely dominant stock ownership • • • but also there must appear elements of fraud and estoppel with respect to the outside creditors". (Matter in brackets supplied).

See also Powell, Parent and Subsidiary Corporations (1931), pp. 5-6, where the author states that:

> "It must be shown that the control over the subsidiary was exercised by the parent corporation in such a manner as to defraud or wrong the complainant. If no wrong has been done to the complainant, the parent corporation should not be made to respond simply because it has exercised undue control over the subsidiary". See also Powell, op. cit. pp. 40-42, 50. And see *New York Trust Co.* v. *Carpenter*, 250 Fed. 668, 676 (C. C. A. 6, 1918).

Southern Pacific Co. v. *Bogert*, 250 U. S. 483, 63 L. Ed. 1099 (1919) is directly contrary to the position taken by petioners as to the effect on the entire Standard claim of one allegedly wrongful transaction. In that case this Court held that the owner of 75% of the stock of a railroad could not wrongfully manipulate the reorganization of the railroad so as to substantially exclude minority stockholders; at the same time this Court modified the decree of the District Court so as to give the majority stockholder the status of a creditor to the extent of its actual advances to the subsidiary in the payment of its creditors. Mr. Justice Brandeis, writing the prevailing opinion of the Court, said (250 U. S. 496-497):

> "Some adjustment should obviously be made so as to compensate the Southern Pacific for any contribution made at its expense to the value of the stock in the new company of which the minority stockholders

may get the benefit. The purpose of this proceeding is not to punish the Southern Pacific, but to declare and enforce its obligation as trustee. The minority stockholders who seek equity should do equity; and a court of chancery has power in granting relief to prevent unjust enrichment of the minority stockholders at the expense of the Southern Pacific."

Cf. *McCandless* v. *Furlaud*, 296 U. S. 140, 167, 80 L. Ed. 121 (1935);

Thomas v. *Brownville, Fort Kearney, etc. R. Co.*, 109 U. S. 522, 27 L. Ed. 1018 (1883).

Circuit Judge Williams in his concurring opinion in this case found that "no fraud appears in the record" 96 F. (2d) 693, 707 (Vol. I, p. 500).

The Trustee's counsel also found that apart from the Refining Company transaction—which he questioned—there was no fraud on the part of Standard (Vol. II, p. 389).

(e) *The Instrumentality Rule is a Rule of Equity and Will Not Be Invoked to Obtain an Unjust Result.*

As we have shown, the instrumentality rule is invoked in order to avoid an inequitable result. To invoke the rule in this case would bring about an unjust and inequitable result—the unjust enrichment of the preferred stockholders of Deep Rock at the expense of the public holders of Standard's $73,649,500. of funded debt (Vol. II, p. 392) and of its capital stock.

In *In re Van Camp Products Co.*, 95 F. (2d) 206 (C. C. A. 7, 1938), cert. den. 83 L. Ed. 12, 59 S. Ct. 65, (1938), precisely that issue was presented. The preferred stockholders of the bankrupt objected to a compromise of a claim of an affiliate of the bankrupt. But for this debt, the bankrupt would have been solvent. The Circuit Court of Appeals

sustained a compromise, although it found that much of the intercorporate financing "was unconscionable"; that there were interlocking directorates, and that contracts were entered into in prejudice of legal and moral rights. In sustaining the compromise (which had been approved by a Referee in Bankruptcy and sustained by the District Court), the Circuit Court of Appeals said:

> "Here there may have been officerial liability arising out of the breach of duty of officers occupying dual position. But the settlement which is before us for approval does not include the compromise of any such liability. *The proposed settlement deals only with the transactions of two corporations—the stockholders and creditors, of each, in a sense, being innocent of any wrongdoing.* The court's duty under such circumstances is to look to the contracts of the two parties and if the composing of differences be deemed "for the best interests of the estate" (Section 50, title 11 U. S. C. A.) it should authorize the settlement." (Italics supplied).

Cf. *Jackson* v. *M. H. Thomas Inv. Co.*, 46 F. (2d) 252, 254 (C. C. A. 5, 1931):

> "We think the District Judge correctly refused to apply the principle of alter ego to the situation of this case as disclosed in the record because of the presence of primary creditors of the defendant corporation, and the impossibility of determining the sufficiency of its assets to satisfy such primary obligations of the corporation."

In *Duffy* v. *Treide*, 75 F. (2d) 17, 19 (C. C. A. 4, 1935), the court said:

> "As in the case of a failed bank, the real parties at interest are the depositors of the bank and not the corporation itself, so here the creditors of the Davison Company (the parent) are the parties at interest". (Matter in brackets supplied).

That the real parties at interest here are the creditor of Standard is apparent from Standard's own reorganization proceedings[1] in which the maturity date of a large note issue due in 1935 was extended to 1948 and the common stock lost the voting control which it had previously enjoyed exclusively.

Cf. also *Rapid Transit Subway Construction Company* v. *City of New York*, 259 N. Y. 472, 491 (1932).

(f) In no reported case has the instrumentality rule been invoked in favor of preferred stockholders. To do so would require that the claim of the parent creditor be subordinated not only to the claims of other creditors but also to the claims of stockholders.

In re Davison Chemical Co., U. S. D. C. Md. October 17, 1935 is quite similar in many respects to this case.[2] Preferred stockholders opposed a plan of reorganization asserting that the claim of a parent creditor in an amount exceeding $2,000,000. must be subordinated to the capital interests of the preferred stockholders. The District Court held that the instrumentality rule

> "cannot properly be extended for the benefit of preferred stockholders who are, of course, not creditors, but part owners of the corporate assets. If the Eastern has been mismanaged by the Davison, the remedy available to the preferred stockholders is a damage suit against the individual officers and directors of Eastern".

Fryer v. *Wiedemann*, 148 Ky. 379, 146 S. W. 752 (1912) is directly in point, although it involved natural persons as the controlling stockholders. Two dominant stock-

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[1] *In re Standard Gas & Electric Co.*, C. C. H. Bankruptcy Service, Paragraph 4966, pp. 2856-2857.

[2] The Daily Record, Baltimore, Md., October 21, 1935; C. C. H. Bankruptcy Service, Paragraph 3656, page 1689.

holders had lent money to the corporation. When the assets of the corporation were sold in the course of receivership proceedings, the proceeds were insufficient to permit any distribution to preferred stockholders if the dominant stockholders were allowed to prove their claims. The Kentucky Court ruled that a dominant common stockholder can validly lend funds to a corporation, and in the absence of fraud, can collect as a creditor.

Cf. *in re New York Railways Corporation*, 82 F. (2d) 739 (C. C. A. 2, 1936) cert. den. 298 U. S. 687, 80 L. Ed. 1406 (1936) in which the parent corporation was allowed a claim at par for bonds of a subsidiary purchased in the open market at 10% of their face value. See also *Salomon v. Salomon & Co.* L. R. [1897] A. C. 22 (House of Lords).

The denial to stockholders of immunity of liability to creditors, and the corollary denying to a parent stockholder the right to enforce a claim against an insolvent subsidiary "instrumentality" afford no basis of principle to support petitioners' contentions. A stockholder's rights (whether preferred or common) are derived through the corporation. They are proprietary in character—the stockholder has advanced permanent capital to the corporation. The creditor cases proceed on the basis of reaching an equitable result in an attempt to correct a fraud or wrong committed with respect to the creditor.

In re Kalamazoo Building Co., 21 F. Supp. 852, (W. D. Mich. 1937);

Finley v. *Union Joint Stock Land Bank*, 281 Mich. 214, 274 N. W. 768 (1937).

In the case at bar, there has been no damage to the corporation or to the preferred stockholders as a result of Standard's conduct, nor, as we have shown, has there

been any fraud. On the contrary, Standard has advanc to the corporation $12,201,522.58 in cash more than recovered; and out of the moneys provided by these a vances the preferred stockholders, far from being da aged, have collected $2,542,519 in dividends.[1]

In *In re Van Camp Products Co.*, 95 F. (2d) 206 (C. C. A 7, 1938) cert. den. 83 L. Ed. 12, 59 S. Ct. 65 (1938), *Jackson* v. *M. H. Thomas Inv. Co.*, 46 F. (2d) 252 (C. C. A 5th, 1931), and in *Duffy* v. *Treide*, 75 F. (2d) 17 (C. C. A. 1935), the courts recognized the fact that the existence o a separate class of creditors and security holders of th parent corporation may make inequitable the disregard o the subsidiary's separate corporate entity. In this case, th far reaching effects and the possible adverse consequence to the creditors and preferred stockholders of Deep Roc of holding Deep Rock to be a department of Standard were not foreseeable. The Trustee's counsel recognized the existence of this problem and the possibility that such a decision might have an adverse effect on the substantive rights of the noteholders of Deep Rock and of the preferred stockholders (Vol. II, pp. 392-393) (both of which classes of security holders enjoy substantial rights under the plan).

(g) Even the application of the instrumentality rule could not deprive Standard of a claim for $2,532,092.11 for

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(1) The charge of fraudulent manipulation of Deep Rock's securities charged at pages 61-64 of petitioner's brief is an attempt to becloud the true issue. There is no proof in the record dealing with any representations that were made in connection with the sale of Deep Rock preferred stock; further the record is clear that Standard did not sell this stock. If misrepresentations were made by the vendors of the stock, Byllesby and other bankers, they (but not Standard) may be liable to the parties damaged thereby; Byllesby no longer exercises voting control over Standard, and, of course, the record clearly shows that Byllesby and Standard are not one (Vol. II, pp. 412, 469). Between them are the creditors and stockholders of Standard. The Record does not sustain any of the charges against Standard contained in the pages of petitioners' brief to which we have referred in this note.

the stock and note of the Refining Company. For the transfer of these to the Debtor, the latter would unquestionably be required to restore to Standard its out-of-pocket cost of the stock and note.

Southern Pacific Co. v. *Bogert, supra.*

McCandless v. *Furlaud, supra.*

Thomas v. *Brownville, etc. R. Co., supra.*

We submit that the instrumentality rule is inapplicable to this case; and that at the most, the contentions of petitioners raised debatable issues of fact and law—particularly in view of the absence of any case sustaining the application of the instrumentality rule for the benefit of preferred stockholders—as to whether the rule should be applied and as to its consequences if applied; that this case presents no state of facts calling for the application of the instrumentality rule so as to invalidate Standard's claim; and that the approval of the compromise by the District Judge was no clear abuse of discretion.

C. There Are No Offsets Which Can Eliminate the Standard Claim. If Any Legitimate Dispute Exists, It Is with Respect to the Amount of the Claim Rather Than with Respect to Its Validity.

Petitioners contend (Pet. Br., pp. 65-70-A) that even if the instrumentality rule does not apply, it is so clear on the record that approximately $20,000,000. of charges in the open account of Standard with Deep Rock are "wrongful", that they must be offset against the Standard claim of $9,342,642.37, thereby extinguishing the claim. Therefore, argue petitioners, there was a clear abuse of judicial discretion in the approval of the compromise.

1. Since the amount of the compromise offer, as we have shown, eliminates all debatable items and provides for

the allowance of the Standard claim as compromised a non-debatable minimum, the field of inquiry opened b petitioners' contentions is largely academic. As a resu of the transactions of 1926 and 1928 the slate was wipe clean by a surrender by Standard of approximately $13 000,000. of the charges in the open account referred to i Chart 3 (p. 70-A) of Petitioners' Brief. The remainin charges constitute no part of the settlement figure.

Those charges which Standard surrendered in 1926 an 1928 cannot now be revived in order to permit petitioner to call them invalid and offset them against the Standard' claim for out-of-pocket cash advances. In effect, conten petitioners, you are making no claim on account of thos old charges, but if you did, they would be invalid; there fore, (in an obvious non sequitur) they argue that thes items should be set off against Standard's valid claim.[1]

2. Standard maintains that all the charges referred t in Chart "3" at page 70-A of Petitioners' brief ar valid charges. Standard has not abandoned its claim fo the difference of $6,966,566.06 by which its claim exceed the non-debatable excess of cash advances over credits sinc 1928 (amounting to $2,376,076.31) *except if the compromis be consummated.*

In addition, as Petitioners concede (Pet. Br., note a p. 70-A), Standard would be entitled to a claim of $2,532, 092.11 for the conveyance to Deep Rock of all the stock o the Refining Company and of all the debt of the Refining Company to Standard.

We will show briefly the validity of the items making up the Standard claim (aggregating the sum of $6,966,566.06) other than cash, which have accrued since the 1928 surren-

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[1]The Trustee did not object to many of the items prior to 1928 (Vol. II, p. 383).

der of indebtedness. To this extent only can there be any pertinence to a discussion of particular charges in the account, since all charges prior to 1928 have been eliminated.[1] For the sake of completeness, we will, in passing, comment briefly on some of the charges which preceded the 1928 surrender of indebtedness.

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[1]There were no transactions at all after the 1928 surrender of indebtedness in certain of the categories referred to in the chart at page 70-A of Petitioners' Brief. These categories are as follows:

(a) Assumption by Standard of Deep Rock's open account with Standard's subsidiaries—$63,350.05.

This amount consists of two items, both of which appear in the open account prior to 1928 (Vol. I, p. 62; Vol. II, pp. 93-94; Vol. III, p. 55). The sum of $42,750. represents a charge of Blue Ridge Oil & Gas Company, (then controlled by Standard) in 1922, for oil and gas leases purchased by Deep Rock. The balance includes payment to Oklahoma Gas & Electric Company, a subsidiary of Standard, for cash proceeds from bank loans and for rental of equipment installed at the Deep Rock plant in 1923.

(b) Sale by Standard to Deep Rock of Home Oil Company stock.

At the request of Deep Rock and on its behalf Standard purchased shares of the Home Oil Company, acting as the agent for Deep Rock. Its charge to Deep Rock of $175,000. is matched by a credit to Deep Rock of that amount, the credit taking the form of notes received by Standard and transmitted by it without cost to Deep Rock directly to the vendor of the Home Oil Company stock (Vol. II, pp. 125-126). Standard was a mere conduit in that transaction.

(c) Salaries and engineering fees paid directly to the Management Corporation by Deep Rock.

This item, aggregating $486,618.93 according to Chart 3, included special engineering services rendered to the Debtor by the Management Corporation (Vol. II, pp. 90-92, 139-140) and reimbursement for specific services rendered to the Debtor by specific employees of the Management Corporation. These items accrued before the 1928 settlement.

(d) Balance on open account between Byllesby and Deep Rock assumed by Standard.

The record discloses (Vol. II, pp. 92-93) that the largest item in that account represents a liability of Deep Rock amounting to $468,987.58 to C. B. Shaffer individually for oil

a. The Refining Company rentals. (Pet. Br., p. 70-A).

In our Statement of the Case we have analyzed the transaction between the Debtor and Standard with respect to the Refining Company property (*supra*, pp. 29 to 32). We will not, therefore, restate the facts at this point except to call attention to these salient features of the transaction.

(1) Standard supplied Deep Rock with the cash used in the construction and development of the cracking plant. In 1923, 1924 and 1925 (the years during which Deep Rock disbursed an aggregate of $1,894,592.11 for improvements to the Refining Company property), Standard's cash advances to Deep Rock on open account amounted in the aggregate to $11,482,385.23 (Vol. I, p. 61). The total cash reimbursement by Deep Rock to Standard during the same years aggregated $1,322,623.63 (Vol. I, p. 63). The difference between the two figures is $10,159,761.60. If this course of conduct be looting, it is looting of a very novel character.

(2) Standard paid $650,000. in cash for the purchase of the Bradstreet properties.

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first borrowed (then purchased) by Deep Rock from Shaffer. The amount also includes a reimbursement of $175,000. for cash advanced by Byllesby to cover the payment of two dividends on the 50,000 shares of the publicly held preferred stock of Deep Rock, and a charge by Byllesby of $33,486.25. for a portion of expenditures incurred in the rebuilding of offices used by Deep Rock.

(e) The 1922 bill of Byllesby for expenses in 1919 in organizing Deep Rock amounting to $142,850.49. An itemization of the amounts included in this item is set forth in Vol. III, p. 122. The item is also referred to in Vol. II of the Record at page 98. The two largest items in the account are $38,489.37 for office space for Deep Rock (Vol. III, p. 122) and $35,000. for legal services for preparation of the trust indenture agreement for the bonds of Deep Rock. The other items as well are charges for Deep Rock's organization.

(3) The rental fixed for the Refining Company property in 1925, after Deep Rock had enjoyed the free use of the property during 1923, 1924 and 1925, to the extent of realization therefrom of a net profit of $1,619,398.88 (Vol. II, pp. 53, 102), was regarded as "the proper amount which any company would willingly pay an outsider interest for money in an oil investment." (Vol. II, p. 165). It is common knowledge that the oil business is peculiarly hazardous and speculative; that the operation of an oil producing property necessarily involves a depletion of the property; and that therefore the return obtained from such operation constitutes return of capital as well as earnings; that the speculative character of the amount of the oil in a well—the unknown element of the production life of a well—normally requires a prudent investor to recoup his capital in a very short time. See Glassmire, "Oil and Gas Leases and Royalties" (1935), p. 58, seq. It is also well known that a cracking plant obsolesces with great rapidity due to rapidly changing techniques (Vol. II, pp. 220-222).

(4) Of the $4,525,000. of rental charges, $1,475,000. accrued prior to January 31, 1928 and was surrendered in 1928. However, in computing the amount of the compromise offer, this amount was deducted from the $2,532,092.11 which petitioners admit (Pet. Br., p. 70-A) that Standard is entitled to claim against Deep Rock (Vol. I, pp. 239-240). Thus, not only does the compromise offer not include any amount for rental charges, but Deep Rock receives a credit for rental charged (but not paid) prior to the 1928 debt surrender.

b. Sundry expenditures charged by Standard to Deep Rock. (Petitioners Br., p. 70-A).

A detailed analysis of the item of sundry expenditures, aggregating $1,087,569.57, appears at Vol. III, pp. 41-53.

Of the total, only $539,252.74 has accrued since the 192 surrender of debt.

Of all of the items under this heading there is only on to which Petitioners' Brief makes specific objection, a item of $139,417.29. (Pet. Br., pp. 67-68). In the detailed analysis of the charges, the item appears at Vol. III, p. 51 Petitioners argue that this item represents a charge mad by Standard in December, 1930, for services rendered i 1919. The charge was in fact made in 1930 but represent a reimbursement made in 1930 for counsel fees and dis bursements arising subsequent to 1919 in connection wit the acquisition in 1919 by the Debtor of its property. Th amount included such items as the payment of legal fee incurred in connection with tax problems arising out of th original acquisition by Deep Rock of its properties. (Vol II, p. 159). The date in the memorandum of charge, in th light of testimony in the Record, obviously refers to th date of organization of Deep Rock and not to the date whe services were rendered.

A mere inspection of the record at Vol. III, pp. 41-53 discloses that each item of expenditure included under th caption "Sundry Expenditures" was a proper and neces sary disbursement on behalf of Deep Rock, the benefit o which went directly and solely to Deep Rock. The item include fees for qualifying Deep Rock and subsidiaries o Deep Rock to do business in various states, revenue stamps refund of income tax on bond interest as required by Deep Rock's indentures, payment of fees to Deep Rock's ac countants for the preparation of income tax returns fo Deep Rock, printing, services of banking institutions a transfer agents, registrars' fees, payment for materials purchased by Deep Rock, fees of The Corporation Trust Company for statutory representation services for Deep Rock and its subsidiaries, fees for legal services rendered

to Deep Rock on income tax matters, and reimbursement for services and expenditures of counsel for Deep Rock, accountants for Deep Rock, and of others employed by it in connection with matters involved in the acquisition of property of Deep Rock. An aggregate of $162,000. is included in the sundry expenditures, representing federal income taxes of the Refining Company paid by Standard for the years 1926-1927, and charged to Deep Rock in pursuance of the provisions of the 1925 lease of the Refining Company property. This amount constituted a portion of the open account claim of Standard against Deep Rock cancelled in 1926 and 1928.

The statement at page 68 of Petitioners' Brief (referring to the item of $139,417.29) that "this failure of proof is typical of Standard's presentation of its claim" is unsupported by any reference to the Record and is based upon petitioners' misconstruction of an item included in Sundry Expenditures. The Record, in fact, did contain an explanation of this item (Vol. II, p. 159), and the charge of failure of proof is without foundation.

c. Dividends on common stock (Pet. Br. p. 70 A). A fair disclosure by petitioners would have compelled them to have added "to others". The record shows that the only dividends on the common stock of Deep Rock which involved an expenditure of cash by Deep Rock, were dividends paid to others than Standard (Vol. III, p. 121). Of the sum of $102,576. in such dividends paid to others, $29,328. was paid after the 1928 debt surrender (Vol. III, p. 121).

d. Dividends on common and preferred stocks directly to Standard (Pet. Br. p. 70 A). The $4,483,437, referred to in Petitioners' Chart 3 does not include any amount for dividends on preferred stock since 1928 and includes only

$840,672. of charges resulting from a declaration of a dividend on the common stock held by Standard for the year ended December 31, 1928. The remainder of the amount referred to in Petitioner's Chart represents dividends declared prior to 1928, the charges for which were surrendered by Standard in the 1926 and 1928 transactions. Petitioners' criticism of the dividend declarations must be presumed to be limited to those declared on the common stock since charges accruing because of Standard's ownership of preferred stock arose simultaneously with the payment in cash of dividends to the public holders of preferred stock including the stock represented by petitioners. The aggregate of all the common stock dividends declared in favor of Standard and charged to the open account, amounted to $1,946,672, including the item $840,672. for the year 1928, and an item of $1,106,000. charged in consequence of a dividend declaration for the year 1926. As we have shown, the latter item was included in the charges surrendered in 1928.

We contend that the charge for the dividend declared in 1928, though not included in the settlement figure, was a valid charge. Deep Rock is a Delaware corporation, and under the provisions of the Delaware Corporation Law relating to corporations engaged in exploiting wasting assets, the dividend declaration was proper.

Sec. 34 of the General Corporation Act of Delaware (Rev. Code, Del. 1935, Sec. 2066) provides:

> "Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets, without taking into consideration the depletion of such assets resulting from lapse of

time or from necessary consumption of such assets incidental to their exploitation." (This provision has been in the Delaware Corporation Law since March 2, 1927).

Under that provision of the Delaware law, it has been held that a wasting asset corporation may calculate net profits without taking into consideration the depletion of assets resulting from their exploitation. *Wittenburg* v. *Federal Mining & Smelting Co.*, 15 Del. Ch. Rep. 351, 138 Atl. 352, 55 A. L. R. 39 (1927).

The evidence shows that in the years 1926, 1928 and 1929 the earnings and assets of Deep Rock justified the declaration and payment of dividends (Vol. III, pp. 103-110). Nor was such declaration rendered improper or improvident because lack of cash caused the directors to borrow the cash with which to pay the dividend to public stockholders. *People of Colorado ex rel. Fraser* v. *Great Western Sugar Company*, 29 F. (2d) 810 (C. C. A. 8, 1928); *Alabama Consolidated Coal & Iron Co.* v. *Baltimore Trust Company*, 197 Fed. 347 (D. C. Md. 1912); *Splittgerber Bros.* v. *Skinner Packing Co.*, 119 Neb. 259, 228 N. W. 531 (1930); Cf. *Lynch* v. *Hornby*, 247 U. S. 339, 62 L. Ed. 1149 (1918); *Wittenburg* v. *Federal Mining & Smelting Co., supra*, note in 55 A. L. R. at p. 39.

It is pertinent at this point to refer to the chart appearing at page 56-A of Petitioners' Brief. This chart is a comparison of the book earnings of Deep Rock with the net income reported for federal income tax purposes. The chart is offered in Petitioners' Brief to sustain their contention that dividends were wrongfully "withdrawn" by Standard (pp. 54-56). The income tax returns filed by Deep Rock do not support petitioners' contention that the dividends declared in favor of Standard by Deep Rock were

unlawful. The difference between the earnings on the books and the earnings as shown on the income tax returns of Deep Rock are accounted for fully by the difference between percentage depletion allowed as a deduction from gross revenue for income tax purposes (26 U. S. C. A. Sec. 23m, n; Sec. 114 (b)) and depletion and depreciation deducted by Deep Rock (according to practices approved by its accountants (Vol. II, pp. 237-238)), plus items charged to capital on Deep Rock's books which constituted permissible deductions from gross income for income tax purposes (Vol. II, pp. 234-237; Vol. III, p. 89). A detailed reconciliation of the book earnings of Deep Rock with the earnings returned for Federal income tax purposes is in the Record (Vol. III, pp. 90-93).

An adjustment of the surplus account of Deep Rock for the years 1926, 1927, 1928 and 1929 (the years in which the criticized dividends were declared), giving effect to the deductions made for Federal income tax purposes, would not result in an elimination of Deep Rock's surplus (Vol. III, pp. 94-97).

It is notable that at page 54, Petitioners' Brief recites that Standard "paid to itself" about $4,500,000. in dividends from Deep Rock * * * of which all but $980,000. appears in the open account upon which Standard bases its claim; nevertheless at page 70A, on Chart 3, Petitioners do not deduct the sum of $980,000. but describe the entire $4,483,437. as a "wrongful diversion." As we have shown, the $980,874. item was never collected in cash by Standard; for on the day payment was due, Standard surrendered the entire amount of its dividend for common stock of the Debtor (Vol. II, p. 89).

(e) Interest and Discounts Charged by Standard (Pet. Br., 70A).

Of the $6,448,440.69 to which petitioners refer, $1,113,629.69 consists of discount, $4,819,222.07 constituted interest on open account balances, $184,087.93 constituted interest on notes receivable, and $331,500. constituted a charge for interest on a five year six percent note of Deep Rock (Vol. II, p. 116).

(1) Discounts.

The amount of $1,113,629.69 constituted discount on note issues of Deep Rock acquired by Standard, two of which note issues (aggregating $17,500,000.) were disposed of by Standard to others at the same discount. Of this charge, $604,848.20 was incurred after the 1928 debt surrender. This charge for discount of $604,848.20 on the $10,000,000. note issue of Deep Rock in 1928 was not a profit to Standard; on the contrary, the record is clear (Vol. I, p. 57) that Standard's realization on these notes was $10,000,000. minus the exact amount of the discount.

Precisely the same situation is true with respect to the discount of $226,250. on the $7,500,000., 1926 note issue (Vol. II, pp. 181, 97). Standard credited Deep Rock with the exact proceeds of these notes. For bonds of Deep Rock aggregating $100,500., Standard credited Deep Rock with the proceeds received by it in 1921, $80,641.20 (Vol. I, p. 63). The Record does not show that Standard profited by this transaction. The only discounts "enjoyed" by Standard on securities of Deep Rock were the following: a discount of $170,000. in 1926 on a 6% note of $4,250,000. principal amount due in five years, and a discount of $92,672.69 on notes of $1,057,300. due in 1923-1924 (Vol. I, p. 57). Both discounts constituted a portion of the open account claim of Standard which was surrendered in 1928 (Vol. II, pp. 96, 116-117). There is not the slightest testimony in the record that these notes of Deep Rock were

worth more than the principal amount less the discount charged.

(2) INTEREST.

Petitioners' contest the interest charges on the ground that the interest rate of 7% per annum compounded monthly was excessive and was not based on any agreement of Deep Rock. The Record is clear that the cost to Standard of the money which it loaned and advanced to Deep Rock was in excess of the rate of 7% per annum compounded monthly (Vol. II, p. 65); and that the interest charges were based on an agreement between Standard and Deep Rock (Vol. II, pp. 161-162). Petitioners' contention is that the interest charges at the rate of 7% compounded monthly[1] are illegal under the laws of Illinois (Pet. Br., p. 58).

The law of Illinois in force from 1919 until July 1, 1925 (Chapter 74, Cahill's Illinois Revised Statutes (1923)), Section 11, provided as follows:

> "No corporation shall hereafter interpose the defense of usury in any action."

This provision of the Illinois statutes had been in force since July 1, 1879. In 1925 (Laws of 1925, page 452, June 19, July 1), the Illinois Statute as quoted was amended by repeal of Section 11, and the adoption of an amendment to Section 4 of Chapter 74, providing as follows:

> "with respect to money loaned to or in any manner due and owing from a corporation, the parties may stipulate or agree upon any rate of interest whatsoever and take and pay the same." (Cahill's Ill. Rev. Statutes, 1925, Chapter 74, Section 4; 12 Jones, Ill. Stat. Ann. Section 67.04).

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[1]The rate of 7% per annum if compounded monthly yields a return equivalent to 7.27% per annum (Vol. II, p. 435).

The statute last quoted has been in force from 1925 until the present time.

It is obvious therefore that Deep Rock, a corporation, could not plead usury in defense to an action to enforce a promise to pay interest at 7% per annum compounded monthly. However, the Illinois courts have held that they will not enforce an agreement to pay compound interest upon interest in advance of maturity.

> *U. S. Mortgage Company* v. *Sperry,* 138 U. S. 313, 340-342, 34 L. Ed. 969, 979, 980 (1891).

But, "after interest has become due, it may by agreement between the parties be turned into principal, and made to bear interest for delay of payment".

> *Thayer* v. *Wilmington Star Mining Co.,* 105 Ill. 540 (1883);
>
> *Drury* v. *Wolfe,* 134 Ill. 294, 25 N. E. 626 (1890);
>
> *Thoendel* v. *Robertson,* 214 Ill. App. 473 (1919).

The practice of monthly settlements, and the addition of the accrual to the principal, was followed in this case (Vol. II, p. 86). Any other practice would have been impractical in view of the constantly changing balance.

In *Boise* v. *Talcott,* 264 Fed. 61, 66 (C. C. A. 2, 1920), this practice was viewed by the court as customary, and the argument that it results in compound interest was held to be unfounded. See *Johnston* v. *Brown,* 300 Fed. 737 (S. D. N. Y. 1924).

At the most, the Illinois law might disallow the attempt to collect so much of the interest accrual as was made through compounding.

> *Bowman* v. *Neely,* 137 Ill. 443 (1891);

U. S. Mortgage Company v. *Sperry*, 138 U. S. 12, 34 L. Ed. 969 (1891).

The whole of the interest charge may be sustainable on the basis that it was a charge for a loan of credit rather than interest on a loan. *United Light & Power Co.* v. *Grand Rapids Trust Co.*, 85 F. (2d) 331 (C. C. A. 6, 1936); cf. *Philadelphia Warehouse Co.* v. *Seeman*, 7 F. (2d) 999 (C. C. A. 2, 1925) aff'd. 274 U. S. 398 (1927). Or the whole of the interest charge may be sustained if the Oklahoma (rather than the Illinois) law be held to apply. The Oklahoma law in effect since 1910 (Oklahoma Statutes, 1931, Sec. 9518) permits an interest rate as high as 10%, and many of the transactions upon which interest was charged occurred in Oklahoma. Whether the place of payment was to be Oklahoma or Illinois does not appear from the Record.

A calculation of interest at the rate of 5% per annum simple interest would amount to $3,070,436.49 (Vol. II, p. 135).

(f) Supervision Fees Charged to Deep Rock by the Management Company (Pet. Br., p. 70-A).

As we have shown in our statement of the case, the Management Corporation rendered engineering, accounting, financial, transfer, clerical, purchasing and other services to the Debtor. It is true with respect to this item that the amount may be subject to challenge; but it is beyond dispute that services were rendered and that Standard is entitled to payment therefor. $720,000. of the item has accrued since the 1928 debt surrender.

United Light & Power Co. v. *Grand Rapids Trust Co.*, 85 F. (2d) 331 (C. C. A. 6, 1936).

In that case the Circuit Court said in respect to claims or compensation of a management corporation:

> "We think it is going too far to say that such contracts made by a corporation with its sole stockholder are void (citing cases) but, because they involve the relationship between the railway and its sole stockholder, they will be carefully scrutinized to see that they do not divert the assets of the railway to the stockholder without consideration. * * * Still, some services were rendered. * * * Intricate and extensive blueprints were prepared; savings were effected in insurance and in purchases of equipment and supplies. All this was worth something, and there is no substantial reason for disagreeing with the findings of the District Judge."

(g) Open Account Balance on Sundry Charges by Management Corporation Against Deep Rock, Assumed by Standard (Pet. Br., 70-A).

The Record (Vol. III, pp. 27-40) contains an itemized statement of all the items constituting the balance of $230,-53.16 which petitioners contend should be disallowed. Of this amount, only $796.22. represents charges since the 1928 debt surrender. Inspection of the Record discloses that the items charged represent a reimbursement of out-of-pocket expenses. Included in these items are advances of money for salaries of employees of the Debtor, cost of furniture and fixtures for the Debtor's offices, stationery, telephone, telegraph, cost of engraving of Debtor's securities, rent, directors' fees, fees to counsel for the Debtor, traveling expenses incurred by officers of the Debtor in the performance of services to the Debtor, revenue stamps, and advertising charges incurred in connection with calls for tenders to the sinking fund for the Debtor's notes and bonds.

(h) Commissions for Partial Extension of the $10,000,000 Note Issue. (Pet. Br., 70-A).

Only $143,425. of the amount of $312,780 is a charge made by Standard to Deep Rock (Vol. II, p. 179). The balance represents transactions between Deep Rock and Byllesby direct in which Standard had no interest (Vol. II, p. 179; Vol. III, pp. 6-15). The Record indicates that the Debtor attempted to obtain a voluntary extension of the maturity date of its $10,000,000 note issue which became due in 1933; that it retained the banking firm of Byllesby to solicit such extensions at the agreed compensation of 4% of the principal amount of Notes consenting to the extension. The evidence is that the rate of compensation was fair and reasonable (Vol. II, pp. 71, 398); indeed the reasonableness of the rate is not disputed in the Record. That the effort to obtain an extension did not succeed because of the intervention of the receivership proceeding is no reason at all for disallowing a charge made for obtaining the voluntary consents of approximately 78% of the outstanding Notes (Vol. II, pp. 173, 627, 628, 821); it is perfectly obvious that such consents from more than $7,800,000 principal amount of Notes could not have been obtained by Byllesby without considerable expense; and the record shows that the actual cost to Byllesby was at least as much as its receipts (Vol. II, p. 466). As far as Standard's charge for this advance for the benefit of Deep Rock is concerned, there is no question about its validity.

(i) Purchase Price of 11,000 shares of Utility & Industrial Corporation Stock Sold to Deep Rock by Byllesby. (Pet. Br., 70-A).

The record discloses that these shares were acquired by the Debtor in order to enable it to make an exchange with

the holders of securities of subsidiaries of Deep Rock (Vol. II, pp. 83-84). The charge made to Deep Rock represented the cost of the stock.

Thus, as we have shown above, the individual items in the accounts to which petitioners have taken exception are valid items of claim, and if any question does exist, it must be directed to the amount for which the charges can be sustained rather than to the validity of the charges.

3. Standard has established the probable validity of its claim.

Petitioners contend (Pet. Br., pp. 65-66) that the burden of proof is on Standard to establish the amount of its claim and the fairness of its charges. We submit that the record shows that Standard's claim is thoroughly supported by sworn proofs, sworn testimony and exhibits setting forth in considerable detail the items included in the account. The correctness of the records has been attested by two eminent accounting firms, Haskins & Sells and Peat, Marwick, Mitchell & Company (Vol. II, pp. 60-61), who found that the balance in the two accounts agreed in spite of minor differences in detail as to the manner of accounting.

Since the items included in the compromise did not arise out of any transactions in which Standard and Deep Rock had any adverse interests—all the cash items involved payments by Standard to third persons—there is no basis for presuming fraud with respect to any item in the compromise. The principles expressed in *Geddes* v. *Anaconda Copper Mining Company*, 254 U. S. 590, 65 L. Ed. 425 (1921), are not opposed to this proposition; indeed all the cases cited by petitioners at page 66 of their brief are cases where in the transactions involved there was a conflict of interest between the parties. As to charges

for services, as to agreements fixing rates of interest, and as to other agreements out of which it may be contended that Standard profited from its control of Deep Rock, the principles stated in *Geddes* v. *Anaconda Copper Mining Company, supra,* may apply; but as to cash payments made by Standard to Deep Rock and to third parties on behalf of Deep Rock there was no conflict of interest between Standard and Deep Rock.

See *Pennsylvania Canal Co.* v. *Brown,* 235 Fed. 669, 685 (C. C. A. 3, 1916) cert. den. 242 U. S. 646, 61 L. Ed. 543 (1917).

If Standard's proofs of the facts are substantially undisputed, as petitioners assert in their brief, that circumstance is not due to any lack of opportunity to petitioners to cross-examine or to introduce their own evidence through their own witnesses.

D. That the District Judge was Fully Advised with Respect to the Merits of the Controversy Did Not Bar Approval of the Compromise.

At pages 79-80 of their brief, petitioners contend that a compromise should not have been approved by the District Court because "full proofs in the trial on the merits of the claim had already been completed". The District Judge never received any proof on the merits of the Standard claim; evidence had been submitted to the Special Master on the merits of the Standard claim but the Special Master had never rendered a report. The Record before the Special Master was before the District Court at the time of the hearing on the plan of reorganization and offer of compromise in December, 1936; but there was never any argument or hearing on the merits of the Standard claim, nor was any proceeding ever brought on for hearing before the District Judge wherein was involved an adjudication on the merits of the Standard claim. The Taylors' recognition that there has been no hearing on the merits nor

adjudication of the merits is evidenced by the fact that in June, 1935 they brought on for hearing a petition for an order directing the Trustee to amend his pleadings in opposition to the Standard claim and that "upon completion of said amendments, the subject matter of the controversy be referred back to the Special Master for full findings of fact and law on the merits of the controversy herein" (Vol. I, pp. 214-217). In November, 1935 the petitioners herein filed a motion praying the District Court to "set a day certain for a hearing on the merits of the claim of Standard" (Vol. I, pp. 245-246).[1]

Certainly the District Court cannot be criticized for having approved a compromise after receiving sufficient information concerning the disputes of fact and law involved as to enable it to render an informed and independent judgment.

See *National Surety Company* v. *Coriell*, 289 U. S. 426, 436, 77 L. Ed. 1300, 1306 (1933); and

First National Bank v. *Flershem*, 290 U. S. 504, 525, 78 L. Ed. 465, 479 (1934).

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[1] At pages 98-99 of their brief petitioners suggest that not only should the orders of the Courts below be reversed but that this Court should adjudicate the claim of Standard on the merits. They make this contention even though, as we have shown, the sole issue before this Court with respect to the Standard claim is whether the compromise approved by the District Judge was so clearly unjustified by the record as to render the action of the District Judge a gross abuse of judicial discretion. The agreement for the condensation of the testimony and exhibits before the Special Master was with a view to the fact that the sole issue raised on review of the order approving the compromise of the Standard claim was the propriety of the exercise of discretion by the District Court; furthermore the merits of the Standard claim had never been argued; nor is the Record which is before this Court the actual record of the hearing on the merits of the Standard claim. Much that is in this Record is extraneous to the issues which would be involved in a consideration of the merits of the Standard claim.

E. The Amount of the Compromise Was Reasonable.

The Circuit Court of Appeals expressly found that the compromise eliminated all questionable items in the Standard claim which the Trustee and his counsel felt were subject to disallowance on their merits, 96 F. 2d 693, 701, 706.

The offer to compromise eliminates every item of charge by Standard to Deep Rock after February 24, 1928 except cash disbursements by Standard for Deep Rock to third parties not affiliated with Standard, and allows to Deep Rock credit for all payments made by it during that period. In addition the compromise calls for the transfer to Deep Rock of all the stock in the Refining Company, for which Standard paid $650,000., and the assignment to Deep Rock of a debt of the Refining Company to Standard in the amount of $1,882,092.11, (which, as petitioners concede (Petitioners' Brief, p. 70A, note), Standard had paid to Deep Rock). Standard's claim, under the compromise, includes the sum of the last two items, less rental charges of the Refining Company to Deep Rock prior to February, 1928, amounting to $1,475,000. The latter amount had already been surrendered by Standard in the 1928 debt surrender, so that by the compromise offer Deep Rock is twice receiving a credit for rentals charged by the Refining Company prior to February, 1928.

The Special Master who heard all the evidence submitted on the merits of the Standard claim and who filed his report recommending the approval of the first offer of compromise stated (Vol. I, p. 201):

> "The proposed compromise appears to be equitable from the standpoint of stockholders and creditors of the Debtor corporation in that it only returns to Standard Gas and Electric Company the unpaid balance which upon accounting would probably be recovered

by it with a low rate of interest and purged of any excessive or usurious charge * * *".

The Trustee stated to the security holders of Deep Rock (Vol. II, p. 704) and counsel for the Trustee stated in open court to the District Judge (Vol. II, pp. 562-563) that the compromise eliminates every contested item in the Standard claim.

As bearing on the fairness of the amount of the compromise we call the attention of this court to the vast amount of money, $12,201,522.58, (Exhibit A, *infra*) by which Standard's cash advances to and for Deep Rock from 1919 until receivership exceeded all recovery by Standard. If we add to this the investment in the Refining Company, at its actual cost to Standard, the total cash out-of-pocket expended by Standard amounts to $14,733,614.69.

In the communication addressed by the Trustee to the creditors and stockholders of Deep Rock in August, 1935 (Vol. II, pp. 702-703) a computation is made by the Trustee of the possible amounts at which Standard might succeed in sustaining its claim on the merits. At the outset, it is important to note that *any claim established on the merits would rank pari passu with the notes and would be superior in rank to the status of the preferred stockholders.* The Trustee's computation shows that if there be deducted from the amount of Standard's claim the amount of interest charges accumulated since 1928 alleged to have been excessive, Refining Company rentals, engineering and management fees, Refining Company income taxes, and dividends, there would still remain a balance in favor of Standard of $3,239,436.79. When the cost of the Refining Company property and the Bradstreet property with interest is added, the amount of Standard's claim would be $6,512,185.28. If the dividend declared in December, 1928

amounting to $840,672. plus interest be added, the Trustee concluded that the balance in favor of Standard would be $7,604,857.28 (Vol. II, pp. 702-703). If Standard's claim were sustained in its entirety and there were added to it the cost to Standard of the Refining Company plus the cost of the Bradstreet properties with interest, Standard's claim would exceed $12,600,000.

We submit that the amount of the compromise offer is the minimum amount at which Standard could probably succeed in establishing its claim.

F. The Approval of the Compromise Offer as Part of the Plan of Reorganization Was Both Sound and Proper.

Reorganizers have found it a convenient and practicable technique to combine proposed compromises of claims with plans of reorganization.

> *In re Burns Bros.*, 14 F. Supp. 910, (S. D. N. Y. 1936);
>
> *In re Kalamazoo Bldg. Co., In re Schram*, 21 F. Supp. 852 (W. D. Mich. 1937);
>
> *In re Los Angeles Lumber Products Co. Ltd.*, 24 F. Supp. 501 (S. D. Cal. 1938).

The District Judge showed by his attitude toward the first compromise offer and by his orders directing the filing of a plan of reorganization accompanied by a new compromise offer (Vol. I, p. 246) that he regarded the compromise of the Standard claim and reorganization of the Debtor as very closely interrelated (Vol. II, pp. 406-410). Throughout the proceeding it was recognized that the compromise and the plan of reorganization were inseparable (Vol. II, pp. 425, 465-467).

The District Judge was justified by the considerations before him in approving the compromise of the Standard claim.

Upon the Record before the District Court, it was quite obvious that Standard had a large claim; that the contest raised debatable issues as to its validity in part or in whole; that the amount of the compromise was the minimum which Standard could probably sustain; that the issues were complicated issues of fact and law and the result of a determination on the merits uncertain (Special Master's Report, Vol. I, pp. 195-202); that if the result of a decision on the merits were in favor of Standard, the noteholders would suffer and the preferred stock would be wiped out completely. A majority of the preferred stockholders had evidenced their unwillingness to gamble on the results of a decision on the merits which might result in their complete elimination, since Standard's claim would rank pari passu with that of the noteholders (Vol. II, p. 562). That petitioners' appeal has delayed the final consummation of the reorganization is no answer to the argument that the compromise was designed to bring to an end already long drawn out litigation. That same argument, if it were sound, would justify the denial of every offer of compromise where a contestant threatens to appeal.

The Trustee's counsel had advised the District Judge as follows (Vol. II, pp. 561-562):

> "I think I have read all the decisions. I spent weeks and weeks preparing a brief in this case, with a synopsis and a narrative statement of the testimony, got it all right here, every witness's testimony is narrated; every item in this account of the Standard has been investigated.
>
> "Now the instrumentality doctrine; you commence with this situation, about which there is no dispute;

that the Shaffer Oil and Refining Company, the former name of the Deep Rock, was not organized as a department or agency of the Standard. There is not any dispute about that. We never insisted it was organized as a department of the Standard. It operated a couple of years under the administration of Charles B. Shaffer, who conveyed the major part of the properties to the Deep Rock. There is another thing on the instrumentality proposition that has to be investigated, and that is, the assets or property of Standard and Deep Rock were never commingled. * * * Now that is a debatable question, and the only way the court can find that the Deep Rock is an agency and a department of the Standard is to find they were converted by this operation into a mere instrumentality of the Standard. Now I have argued all those questions. Now if the court should hold, or if the Court of Appeals should hold that the Deep Rock was not a department of the Standard, the Standard claim on a parity with the noteholders will be allowed for not less than Six Million Dollars. Now I have gone all through this, of course, and if you remove the question of agency, you are going to have a judgment against the Deep Rock Oil Corporation of not less than Six Million Dollars. Now there is not any escape from that under the facts and findings in this record".

Upon the state of facts before the District Judge—this cause had already been pending before him for four years—the approval of the compromise was fully warranted.

G. The Valuation Found by the District Judge Is Amply Sustained by the Record.

Petitioners complain (Pet. Br., p. 81 Seq.) that the order of the District Court finding and declaring as a fact that the value of the properties of the Debtor does not exceed $17,000,000 (Vol. I, pp. 371-372) is unjustifiable and that the evidence would justify a finding of a much higher valuation.

In this Court on an appeal from an order confirming a plan of reorganization, the review is limited to issues of law.

Meyer v. *Kenmore Granville Hotel Co.*, 297 U. S. 160, 80 L. Ed. 557 (1936);

In re 620 Church Street Corp., 299 U. S. 24, 27, 81 L. Ed. 16 (1936).

The finding of the District Court is amply supported by the evidence on valuation. The Circuit Court of Appeals found, 96 F. 2d 693, 707 (Vol. I, pp. 498-499):

> "The finding of value by the Trial Court is clearly supported by the evidence. The appraisal was made by the trustee, assisted by the technical staff of the Deep Rock organization, and was approved after a careful check by an independent expert, Mr. Berend. There was no showing that in making the appraisal any pertinent factor was disregarded. Due consideration was given to going concern value. The Court was entitled to accept and act in the said appraisal. *In re Consolidation Coal Company*, (D. C. Md. 1935) 11 F. Supp. 594, 597.
>
> "The sole proof offered by the independent committee attacking the appraisal was that of Mr. Smith who frankly admitted that he was not qualified to appraise the value of the producing properties."

The District Judge had before him complete records of the earnings of Deep Rock over its entire life, including a period of more than three and one-half years of operation under his judicial authority (Vol. I, pp. 396-409); (Vol. II, pp. 649-650, 738-740). He also had a detailed inventory of the Debtor's property (Vol. I, p. 28).

Mr. Greis, the Trustee, qualified as an expert in the appraisal of oil properties (Vol. II, pp. 514-515), filed an appraisal of the physical assets of the Debtor including

property of the Refining Company (Vol. I, pp. 358-360). The trustee formally certified the appraisal to be true and correct (Vol. I, p. 358).

Mr. Berend, an expert, (Vol. II, pp. 452, 472-474) testified that he had studied and checked the methods used in making up the appraisal and had found that the methods used were "the best known methods and practices in the oil business at this time" (Vol. II, p. 475). He also testified that the trustee's appraisal "is a reasonable, fair valuation to a going concern" and defined a going concern as "one that will continue to operate these properties and make the best of them" (Vol. II, p. 477).

We respectfully submit that the evidence before the District Judge on the issue of valuation met all of the standards of *First National Bank* v. *Flershem,* 290 U. S. 504, 525, 78 L. Ed. 465, 479 (1934) and *National Surety Company* v. *Coriell,* 289 U. S. 426, 77 L. Ed. 1300 (1933); that the District Judge had before him adequate evidence on which to base an informed and independent judgment.

Contrary to the clear facts appearing in the record, petitioners contend that earnings and earning power were not taken into account (Pet. Br. p. 81). Both the Trustee (Vol. II, pp. 475, 527, 529) and the District Judge (Vol. II, p. 528) took into consideration earnings as an element of valuation. In the valuation of oil production properties the appraised value of producing properties actually consists of the present value of *all* the future income of the property. Mr. Berend testified (Vol. II, p. 475) that the valuation of producing properties of Deep Rock was made precisely on that basis (see also the Trustee's testimony, Vol. II, p. 527).

The Trustee was assisted by department heads and engineers in the preparation of the appraisal; but it was his

appraisal (Vol. II, p. 526). As we have shown Standard itself was subject to the jurisdiction of the District Court in Delaware when the appraisal was made; it had not since early in 1933 had anything to do with the management of the Debtor; and in September, 1936 when the appraisal was made (Vol. I, p. 358), Standard's position was that of a claimant with a contested claim—no offer of compromise was pending, nor was any plan of reorganization pending.[1] Unless the Delaware District Court and the Oklahoma District Court and the Trustee have been grossly imposed upon—there is not the slightest hint of it in the record—the suggestion that Standard had anything to do with the preparation of the appraisal or valuation is without foundation.

The record shows that on a sale the value of the assets of Deep Rock would be much less than the appraised valuation (Vol. II, pp. 477-505, 507).

It is appropriate at this point to comment briefly about the allegedly large earnings of the Debtor during its receivership (Pet. Br. pp. 83-85). Petitioners point to an accumulation "through earnings [of] over $4,000,000. in cash, as well as millions of dollars in additions and in improvements to its [Debtor's] fixed assets" (Pet. Br., p. 83; matter in brackets supplied). This statement in Petitioners' Brief evidences a disregard of the testimony in the Record. The Record shows an increase in cash of approximately $4,000,000. and of additions to plant and property account of approximately $2,500,000. during the period of the operation of Deep Rock under Court juris-

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[1]The plan as finally confirmed extends the jurisdiction of the Oklahoma District Court over the Debtor's assets and operations for at least five years after consummation of the plan (Vol. I, p. 418).

diction (Vol. III, p. 132). The latter figure represents all that was spent during the receivership and reorganization proceedings to keep up the producing properties of the Debtor (Vol. II, p. 520). $800,000. of the $2,500,000. does not represent any tangible property but consists of payment of rentals to keep in force leases which the Debtor had: "so in reality we have spent possibly a million and three quarters in development and new leases and other things" (Vol. II, p. 520). The $4,000,000. of cash accumulated represents to the extent of about $800,000. income tax refunds applied for by the Debtor and collected by the Trustee (Vol. II, p. 537), and to the extent of the balance a depletion of the properties of the Debtor—"oil has been taken out of the ground, and have not sufficiently been restored in this four years" (Vol. II, p. 535). Obviously neither cash on hand nor the $6,219,460.17 of income described at Vol. III, page 133 constitutes net earnings; the last mentioned figure is stated to be before provision for Federal and State income taxes, interest charges, depreciation and depletion, amortization of debt discount and expense, oil and gas lease rentals, amortization of non-productive leaseholds and property abandonments. Interest on the $10,000,000. of notes would alone constitute a charge of $2,200,000. against this income; and it must be obvious that in the forty-four months included in the exhibit at Vol. III, page 133, a large portion of Deep Rock's fixed assets were converted into current assets through the extraction of oil from the wells. The petitioners' own expert thought an annual depreciation and depletion charge of $860,000. would be fair (Vol. II, pp. 552-554). In forty-four months even at this rate depreciation and depletion would add up to $3,153,333.33. The depletion charges actually made by Deep Rock before receivership far exceeded any such average rate (Vol. II, p. 650).

The sum of interest and depletion on the basis of Mr. Smith's testimony alone would require an extraction of $5,353,333.33. from the income of $6,219,460.17 reported in the Exhibit at Vol. III, page 133. The apparent large "earnings" are thus merely a commutation of oil into dollars.

The so-called "valuations" (I to VII) on Chart 4 of Petitioners' Brief (p. 86A) were not valuations at all, as reference to petitioners' Record references will show. The first "appraisal" was a memorandum prepared by an accountant at the time oil was selling at $1.49 barrel (Vol. II, p. 676); the second figure is the book figure—by no test, a "valuation"; the third figure was based on an assumed price of oil at $1.52 a barrel (Vol. II, p. 679) (as against $1.00 in 1936, when the Trustee's appraisal was made, Vol. II, p. 506), and was also not an appraisal; the fourth item is not an appraisal of value, it is an estimate of reproduction cost which Berend, the expert, thought was high (Vol. II, p. 495); the fifth figure was a mere rule of thumb guess (Vol. II, p. 537); the sixth figure is not an appraisal—it is merely a contemplated book entry (Vol. II, pp. 538-539); the seventh figure (Mr. Smith's) is not supported by any testimony upon which an appraisal can be based. Mr. Smith merely made a mathematical calculation on an assumed hypothesis (Vol. II, p. 556).

With respect to all the earlier "appraisals" it is important to remember that oil producing properties become depleted through use; and mere use over a period of time will necessarily reduce the value of the property (Vol. II, pp. 535-536).

We respectfully submit that the evidence on value before the District Judge amply sustained his finding.

H. The Allocation of Securities to the Preferred Stockholders Under the Plan Is Fair.

The aggregate of claims allowed against the Debtor at the time of the hearing of the plan of reorganization, including approximately $10,000,000. principal amount due to noteholders, an accumulation of four years' interest on the Notes amounting to approximately $2,300,000, and adding the approximately $5,100,000. of the claim of Standard as compromised is $17,400,000., exceeding by $400,000. the valuation of the Deep Rock properties as found by the District Judge. The preferred stockholders to whom have been allotted about twenty percent of the stock ownership of the reorganized company, subject to a debt of $10,000,000., are thus receiving a participation in the assets of the Debtor, based upon the Court's adjudication of value, amounting to more than $1,000,000.

The Circuit Court of Appeals held that since the aggregate amount of the allowable claims of creditors exceeded the fair value of the assets of Deep Rock, a plan under which preferred stockholders receive approximately 20% of the common stock is manifestly not unfair to the preferred stockholders. 96 F. (2d) 693, 707.

In re Barclay Park Corporation, 90 F. (2d) 595 (C. C. A. 2, 1937);

See also, *In re 620 Church Street Corporation*, 299 U. S. 24, 81 L. Ed. 16 (1936).

CONCLUSION.

There is no principle of law or equity which requires the reversal of the orders of the District Judge entered in the exercise of a sound discretion and amply supported by the

record. The petitioners have failed to show any abuse of judicial discretion in the approval of the compromise with Standard, or that the finding that the plan was fair was unwarranted by the record before the District Court.

We therefore respectfully submit that under the law and on the basis of the record the respondents are entitled to the affirmance by this Court of the orders entered below.

Respectfully submitted,

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SELIG J. LEVITAN,

Counsel for Standard Gas and Electric Company, Respondent.

CHARGES TO OPEN ACCOUNT F
PERSONS FOR THE ACCOUNT O

Description	
Cash Advances:	
On account—Deep Rock Oil Corporation	I 53,
Interest on funded debt of Deep Rock Oil Corporation deposited with Continental & Commercial Trust and Savings Bank and First Union Trust & Savings Bank, Chicago	I 54,
Sinking fund requirements on funded debt of Deep Rock Oil Corporation deposited with Illinois Trust & Savings Bank and Continental & Commercial Trust and Savings Bank, Chicago	I 54,
Payment of Deep Rock Oil Corporation notes discounted by Standard Gas and Electric Company with Empire Trust Co., New York and National Bank of Kentucky, Louisville	I 54,
Payment of interest on Deep Rock Oil Corporation notes discounted by Standard Gas and Electric Company with Empire Trust Co., New York and National Bank of Kentucky, Louisville	I 54,
Dividends on preferred stock of Deep Rock Oil Corporation held by public deposited to credit of Deep Rock Oil Corporation dividend account at Guaranty Trust Co., New York	I 54,
Dividends on common stock of Deep Rock Oil Corporation held by public deposited to credit of Deep Rock Oil Corporation dividend account at Continental & Commercial National Bank, Chicago	I 54,
Funds for redemption of 8% notes due 1941 of Deep Rock Oil Corporation deposited with Continental & Commercial Trust and Savings Bank, Chicago	I 54,
Payment of Deep Rock Oil Corporation note in favor of Continental National Bank & Trust Co., Chicago, less unearned interest	I 54,
Funds for redemption of 6% bonds due 1929 of Shaffer Oil and Refining Company plus interest, premium, etc. deposited with Continental National Bank & Trust Co., Chicago	I 54,
Purchase from H. M. Byllesby & Co. of 11,000 shares Utility and Industrial Corporation preferred stock for account of Deep Rock Oil Corporation	I 55,
Sundry expenditures made by Standard Gas and Electric Company for account of Deep Rock Oil Corporation:	I 55, 13
Continental Illinois National Bank & Trust Co. and predecessors:	
Qualifying Deep Rock Oil Corporation as foreign corporation in Oklahoma	III 4
Qualifying Elmerdale Oil Co., a subsidiary of Deep Rock Oil Corporation, as foreign corporation in Kansas	III 4
Revenue stamps on issue of Deep Rock Oil Corporation preferred stock	III 4
Deposit of funds to secure release of property to be sold	III 4
Services and expenses as registrar, transfer agent, trustee, etc. for account of Deep Rock Oil Corporation and subsidiaries	II 13

Exhibit A

ANALYSIS OF CASH TRANSACTIONS

IT FOR DIRECT CASH ADVANCES BY STANDARD GAS AND ELECTRIC COMPANY TO, AND FOR EXPI
T OF, DEEP ROCK OIL CORPORATION, AND CREDITS TO OPEN ACCOUNT FOR CASH AND SECURIT
STOCK, RECEIVED FROM OR FOR THE ACCOUNT OF DEEP ROCK OIL CORPORATION.

	Period June 1, 1919 to February 24, 1928			Period February 24,
Record References		Charges	Credits	C
I 53, 61, II 75, 76, 114		$16,248,478.05		$ 1,2
I 54, 61, II 77, 78		1,296,360.00		1,8
I 54, 61, II 79		3,886,666.82		
I 54, 61, II 79, 80, 140		100,000.00		1
I 54, 61, II 80		32,818.16		
I 54, 61, II 60, 80		1,519,868.00		1,0
I 54, 61, II 80		73,248.00		
I 54, 61, II 81, 140, 141		245,322.00		
I 54, 61, II 83, 141, 142		395,718.42		
I 54, 61, II 83				1,9
I 55, 61, II 83				
I 55, 61, II 84, 85, 117, 137, 138, 159, III 41 to 53				
III 41	$ 8,404.50			
III 41	552.50			
III 41, 45	9,500.00			
III 45	18,500.00			
II 138, III 41 to 53	11,463.85		$ 7,361.55	

CTIONS

CTRIC COMPANY TO, AND FOR EXPENDITURES MADE TO THIRD
I ACCOUNT FOR CASH AND SECURITIES, OTHER THAN CAPITAL
EP ROCK OIL CORPORATION.

y 24, 1928	Period February 24, 1928 to February 28, 1933		Total		
Credits	Charges	Credits	Charges	Credits	
					(1)
	$ 1,225,000.00		$17,473,478.05		(2)
					(3)
					(4)
	1,800,000.00		3,096,360.00		(5)
					(6)
					(7)
			3,886,666.82		(8)
					(9)
					(10)
	100,000.00		200,000.00		(11)
					(12)
					(13)
	16,683.37		49,501.53		(14)
					(15)
					(16)
	1,022,651.00		2,542,519.00		(17)
					(18)
					(19)
	29,328.00		102,576.00		(20)
					(21)
					(22)
			245,322.00		(23)
					(24)
			395,718.42		(25)
					(26)
					(27)
	1,922,110.23		1,922,110.23		(28)
					(29)
					(30)
	277,475.00		277,475.00		(31)
					(32)
					(33)
					(34)
					(35)
					(36)
			$ 8,404.50		(37)
					(38)
			552.50		(39)
					(40)
			9,500.00		(41)
			18,500.00		(42)
					(43)
$ 7,361.55			18,825.40		(44)

	Description	Record References	Period June 1, 1919 to February 24, 1928			Period February 24
				Charges	Credits	
(1)	Cash Advances (continued):					
(2)	Sundry expenditures (continued):					
(3)	Mercantile Trust & Deposit Co., Baltimore—Services as transfer agent	III 42	$ 250.00			
(4) (5)	Bankers Trust Co., New York—Services and expenses as registrar for account of Deep Rock Oil Corporation	III 41 to 54	409.54			$ 1,609.58
(6) (7)	Guaranty Trust Co., New York—Services and expenses as transfer agent, trustee, etc. for account of Deep Rock Oil Corporation	III 41 to 54	1,628.77			3,549.21
(8)	First Union Trust & Savings Bank, Chicago:					
(9)	Revenue stamps on issue of Deep Rock Oil Corporation notes	II 138, III 45, 47	3,750.00			5,000.00
(10) (11)	Services and expenses as trustee, paying agent, etc., for account of Deep Rock Oil Corporation	III 41 to 53	7,130.55			26,024.67
(12)	Corporation Trust Co.:					
(13)	Services re organization, etc. of Deep Rock Oil Corporation	II 138, III 41, 47	733.64			1,400.00
(14)	Filing fee—qualifying Deep Rock Oil Corporation in Texas	III 49				2,500.00
(15) (16)	Statutory representation service, services as transfer agent, etc., for account of Deep Rock Oil Corporation and subsidiaries	II 84, 138, III 41 to 53	1,285.74			1,928.30
(17) (18)	Brokaw, Dixon, Donnelley, Garner & McKee—Fee re valuation of property	III 41	5,000.00			
(19)	Collector of Internal Revenue:					
(20)	Revenue stamps on issue of Deep Rock Oil Corporation securities	III 41, 48	17,000.00			10,061.00
(21)	Additional assessment of Federal income tax for 1921	III 49				34,552.42
(22) (23) (24) (25)	Excess of amount of Federal income tax paid by Deep Rock Oil Corporation on basis of tentative return for 1921 over the proportion of consolidated tax of Standard Gas and Electric Co. and affiliated corporations allocated to Deep Rock Oil Corporation	II 137, III 43	*2,515.90**			
(26)	Capital stock tax of Toltec Oil Co.	III 43	10.00			
(27)	Harry Fahnestock, Secretary—Listing fee Deep Rock Oil Corp. bonds	III 41	150.00			
(28) (29)	R. J. Graf, Special—Normal income tax on Deep Rock Oil Corporation bonds and notes	III 41 to 53	46,328.61			19,549.08
(30)	Bondholders—Refund of state taxes on Deep Rock Oil Corp. bonds	III 41 to 53	7,652.65			10,480.06
(31) (32)	American Bank Note Co.—Printing securities of Deep Rock Oil Corporation	III 41 to 53	5,202.50			8,368.39
(33) (34)	Haskins & Sells—Services and expenses re tax matters of Deep Rock Oil Corporation	II 85, 138, III 41 to 53	25,341.33			27,822.77
(35) (36)	Lloyds—Proportion of insurance premium covering theft, embezzlement, etc.	III 42	1,500.00			
(37) (38) (39)	Various Chicago banks—To take up drafts drawn by branch offices of Deep Rock Oil Corporation and others against Deep Rock Oil Corporation at time of removal of their offices from Chicago to Tulsa	III 43, 44	16,273.53			
(40) (41)	Wheeling Steel Corporation—Payments for materials purchased by Deep Rock Oil Corporation	II 85, 137, III 44 to 52	257,675.34			125,147.13
(42) (43)	Michigan Securities Commission—Fee for qualifying securities of Deep Rock Oil Corporation	II 84, III 45, 47	300.00			300.00
(44) (45)	Commissioner of Securities, State of Minnesota—Fee for qualifying securities of Deep Rock Oil Corporation	II 84, III 45	100.00			
(46)	State of Illinois—Franchise tax of Deep Rock Oil Corporation	III 48				873.34

*Denotes red figure.

ary 24, 1928	Period February 24, 1928 to February 28, 1933		Total		
Credits		Charges	Credits	Charges	Credits
					(1)
					(2)
			$ 250.00		(3)
					(4)
	$ 1,609.58		2,019.12		(5)
					(6)
	3,549.21		5,177.98		(7)
					(8)
	5,000.00		8,750.00		(9)
					(10)
	26,024.67		33,155.22		(11)
					(12)
	1,400.00		2,133.64		(13)
	2,500.00		2,500.00		(14)
					(15)
	1,928.30		3,214.04		(16)
					(17)
			5,000.00		(18)
					(19)
	10,061.00		27,061.00		(20)
	34,552.42		34,552.42		(21)
					(22)
					(23)
					(24)
			*2,515.90**		(25)
			10.00		(26)
			150.00		(27)
					(28)
	19,549.08		65,877.69		(29)
	10,480.06		18,132.71		(30)
					(31)
	8,368.39		13,570.89		(32)
					(33)
	27,822.77		53,164.10		(34)
					(35)
			1,500.00		(36)
					(37)
					(38)
			16,273.53		(39)
					(40)
	125,147.13		382,822.47		(41)
					(42)
	300.00		600.00		(43)
					(44)
			100.00		(45)
	873.34		873.34		(46)

Exhibit A (Page 3)

	Description	Record References	Period June 1, 1919 to February 24, 1928			Period February 24, 1928 to Febru		
				Charges	Credits		Charges	
(1)	Cash Advances (continued):							
(2)	Sundry expenditures (continued):							
(3) (4)	State of South Dakota—Fee for qualifying Deep Rock Oil Corporation in South Dakota	III 50				$ 130.50		
(5) (6)	State of Colorado—Fee for qualifying Deep Rock Oil Corporation in Colorado	III 52				46.50		
(7)	Hillison & Etten—Printing	III 46	$ 47.50					
(8) (9)	Chicago Stock Exchange—Listing fee Deep Rock Oil Corporation preferred stock	II 85, III 46, 47	1,700.00			500.00		
(10) (11)	Continental & Commercial Safe Deposit Co.—Rental of safe deposit box of Deep Rock Oil Corporation	II 84, III 47, 49	10.00			4.00		
(12) (13)	Shouse, Doolittle, Morelock & Shrader—Legal services re tax matters of Deep Rock Oil Corporation	III 51				173.96		
(14) (15)	Cummins, Roemer & Flynn, Attorneys for Deep Rock Oil Corporation—Services and expenses	III 43, 45, 50	15,561.90			752.45		
(16) (17) (18) (19)	H. M. Byllesby & Co.: (The items hereunder include $5,820.28 of the open account balance due from Deep Rock to Byllesby which were erroneously classified in Exhibit A to Standard's proof of claim as "Sundry Expenditures")							
(20) (21)	Reimbursement for amount paid State of Delaware re organization of Deep Rock Oil Corporation	III 41	5,160.00					
(22) (23)	Reimbursement for amount paid directors of Deep Rock Oil Corporation	III 41	100.00					
(24) (25)	Reimbursement for traveling expenses, telephone, telegraph, advertising, etc., for the account of Deep Rock Oil Corporation	III 41	620.28					
(26) (27) (28) (29) (30)	H. M. Byllesby & Co. and Byllesby Engineering and Management Corporation—Reimbursement for amounts paid for services and expenses of counsel, accountants and others in re acquisition of property of C. B. Shaffer and E. E. Smathers by Deep Rock Oil Corporation in 1919	II 159, III 51, 52, 53				169,222.15†		
(31) (32)	Various manufacturers—Quantity discount on materials purchased by Deep Rock Oil Corporation	III 53				*4.32**		
(33)	Total sundry expenditures			$ 466,766.83			$ 457,352.74	
(34) (35)	Payment of open accounts due from Deep Rock Oil Corporation to other companies:							
(36) (37)	Byllesby Engineering and Management Corporation:	I 55, 62, II 42, 43, 61, 90, 91, 92, 118, III 27 to 40						
(38)	Sundry charges:							
(39)	W. R. Francisco—Services	III 27	$ 1,403.06					
(40)	A. L. Dade—Traveling expenses	III 27	64.63					
(41)	J. L. Gray—Traveling expenses	III 36, 39	370.80					
(42)	W. E. Moody—Cash advance	III 36	175.00					
(43) (44) (45)	Reimbursement of advances for traveling expenses of various officers and employees of Byllesby Engineering and Management Corporation engaged on Deep Rock Oil Corporation business	III 27 to 40	5,867.93					

*Denotes red figure.

†This item includes $139,417.29 which is explained in the brief at page 70.

24, 1928	Period February 24, 1928 to February 28, 1933			Total			
Credits		Charges	Credits		Charges	Credits	
							(1)
							(2)
							(3)
	$ 130.50			$ 130.50			(4)
							(5)
	46.50			46.50			(6)
				47.50			(7)
							(8)
	500.00			2,200.00			(9)
							(10)
	4.00			14.00			(11)
							(12)
	173.96			173.96			(13)
							(14)
	752.45			16,314.35			(15)
							(16)
							(17)
							(18)
							(19)
							(20)
				5,100.00			(21)
							(22)
				100.00			(23)
							(24)
				620.28			(25)
							(26)
							(27)
							(28)
							(29)
	169,222.15†			169,222.15†			(30)
							(31)
	*4.32**			*4.32**			(32)
		$ 457,352.74			$ 924,119.57		(33)
							(34)
							(35)
							(36)
							(37)
							(38)
				$ 1,403.06			(39)
				64.63			(40)
				370.80			(41)
				175.00			(42)
							(43)
							(44)
				5,867.93			(45)

	Description	Record References	Period June 1, 1919 to February 24, Charges	
(1)	Payment of open accounts due from Deep Rock Oil Corporation to other companies (continued):			
(3)	Byllesby Engineering and Management Corporation (continued):			
(4)	Sundry charges (continued):			
(5)	D. T. Flynn—Traveling expenses	III 36	$ 361.30	
(6)	J. L. Darnell—Investigation expenses	III 36	597.71	
(7)	Chas. A. Gneiss & Co.—Carpets for Deep Rock Oil Corporation offices	III 27	2,529.90	
(8)	American Bank Note Co.—Engraving	III 27	6,800.00	
(9)	Directors of Deep Rock Oil Corporation—Directors' fees	II 91, III 27 to 40	3,140.00	
(10) (11)	Cummins, Roemer & Flynn, Attorneys for Deep Rock Oil Corporation Services and expenses	II 90, 92, III 27 to 40	98,095.71	
(12) (13)	Haskins & Sells—Services and expenses re tax matters of Deep Rock Oil Corporation	III 33, 36	1,248.53	
(14) (15)	Reimbursement for amounts paid for rent, stationery, telegraph, revenue stamps, etc. for the account of Deep Rock Oil Corporation	III 27 to 40	58,290.19	
(16) (17)	Reimbursement for cost of additional office space for Deep Rock Oil Corporation and alterations thereof	II 90, III 28	12,859.75	
(18)	Total		$ 191,804.51	
(19) (20)	Less cash received by Byllesby Engineering and Management Corporation	III 27 to 40	39,040.58	
(21) (22)	Net sundry charges of Byllesby Engineering and Management Corporation			$ 152,763.93
(23)	H. M. Byllesby & Co.:	I 55, 62, II 92, 93		
(24)	Directors of Deep Rock Oil Corporation—Directors' fees		$ 450.00	
(25)	American Bank Note Co.—Engraving		1,821.50	
(26)	Collector of Internal Revenue—Revenue stamps		9,180.00	
(27)	Chapman, Cutler and Parker—Legal services		25.00	
(28)	Brokaw, Dixon, Donnelley, Garner & McKee—Catalina Oil investigation		2,450.52	
(29)	Reimbursement for cost of various California oil leases		32,713.41	
(30) (31)	C. E. Karstrom—Purchase of 596 shares Home Oil Co. preferred stock for account of Deep Rock Oil Corporation		44,700.00	
(32)	Deep Rock Oil Corporation—Cash advanced on account		140,000.00	
(33)	C. B. Shaffer—Settlement of liability for borrowed oil	II 93	468,987.58	
(34) (35)	Reimbursement for cash advanced on installment contracts for Deep Rock Oil Corporation 8% notes due 1941		6,243.00	
(36) (37) (38)	Reimbursement of advances for traveling expenses of various officers and employees of Byllesby Engineering and Management Corporation engaged on Deep Rock Oil Corporation business		4,976.70	
(39) (40)	Reimbursement for amounts paid for stationery, telephone, telegraph, advertising, etc. for account of Deep Rock Oil Corporation		9,821.11	
(41) (42) (43)	Reimbursement for Deep Rock Oil Corporation's proportion of expenditures re rebuilding of Deep Rock Oil Corporation's offices and partitions incident to office arrangement	II 93	33,486.25	
(44) (45) (46)	Reimbursement for purchase of $784,000 face value 6% bonds due 1929 of Deep Rock Oil Corporation for account of Deep Rock Oil Corporation		748,720.00	
(47)	Total		$ 1,503,575.07	

24, 1928	Period February 24, 1928 to February 28, 1933			Total			
Credits		Charges	Credits		Charges	Credits	
							(1)
							(2)
							(3)
							(4)
				$ 361.30			(5)
				597.71			(6)
				2,529.90			(7)
				6,800.00			(8)
				3,140.00			(9)
							(10)
				98,095.71			(11)
							(12)
				1,248.53			(13)
							(14)
	$ 379.56			58,669.75			(15)
							(16)
				12,859.75			(17)
	$ 379.56			$ 192,184.07			(18)
							(19)
				39,040.58			(20)
							(21)
		$ 379.56			$ 153,143.49		(22)
							(23)
				$ 450.00			(24)
				1,821.50			(25)
				9,180.00			(26)
				25.00			(27)
				2,450.52			(28)
				32,713.41			(29)
							(30)
				44,700.00			(31)
				140,000.00			(32)
				468,987.58			(33)
							(34)
				6,243.00			(35)
							(36)
							(37)
				4,976.70			(38)
							(39)
				9,821.11			(40)
							(41)
							(42)
				33,486.25			(43)
							(44)
							(45)
				748,720.00			(46)
	—			$ 1,503,575.07			(47)

Description	Record References	Period June 1, 1919 to February 24, 1923		
			Charges	Cre
Payment of open accounts due from Deep Rock Oil Corporation to other companies (continued):				
H. M. Byllesby & Co. (continued):				
Less:				
Proceeds from sale of $784,000 face value of 6% bonds due 1929 of Deep Rock Oil Corporation sold to sinking fund		$ 742,824.20		
Cash received by H. M. Byllesby & Co. from Deep Rock Oil Corporation on account	II 93	219,083.74		
Credit for oil leases on 1,920 acres of land in Oklahoma		10,000.00		
Credit for expenditures made by Deep Rock Oil Corporation for account of H. M. Byllesby & Co.		7,729.70		
Purchase of $1,000 face value of 8% note of Deep Rock Oil Corporation from Deep Rock Oil Corporation		1,000.44		
Total		$ 980,638.08		
Net charges of H. M. Byllesby & Co.			$ 522,936.99	
Oklahoma Gas and Electric Company—Proceeds from bank loans deposited to credit of Deep Rock Oil Corporation	I 55, 62, III 55	$ 14,000.00		
Less—Sundry expenditures made by Deep Rock Oil Corporation for account of Toltec Oil Company, a subsidiary of Standard Gas and Electric Company	I 56, 62	1,773.66	12,226.34	
Acquisition of common stock of Home Oil Company for account of Deep Rock Oil Corporation	I 56, 62, II 95, 96, 125, 126	$ 175,000.00		
Less Shaffer Oil and Refining Co. 8% notes due 1941 received in payment for acquisition of Home Oil Co. common stock	I 56, 62, II 95, 96, 126	175,000.00	—	
Cash received:				
Ca account	I 56, 63			$ 3,053.·
Interest:				
Open accounts	I 56, 63, II 116, 137			680.5
Note receivable	I 56, 63, II 126			21.6
Note receivable discounted	I 56, 63			19.7
Deep Rock Oil and Refining Company—Rentals	I 56, 63, II 122, 123			
Reimbursement for sundry expenditures	I 57, 63			368.2
Miscellaneous cash receipts	I 57, 63			
Reimbursement for advances for dividends on preferred stock of Deep Rock Oil Corporation	I 57, 63, II 60, 96, 97			490.0
Proceeds from sale of $10,000,000 face value Deep Rock Oil Corporation 6% notes due 1933 including accrued interest of $31,666.60 and interest on proceeds allowed by banks of $13,485.20	I 57, 63, II 60			
Less—Funds deposited for redemption of $7,500,000 face value Deep Rock Oil Corporation 6% notes due 1928 including accrued interest of $225,000.00 and bank fees of $3,525.00 less $1,449.55 interest allowed on funds deposited	I 57, 63, II 60, 61			

*Denotes red figure.

24, 1928	Period February 24, 1928 to February 28, 1933			Total			
Credits		Charges	Credits		Charges	Credits	
							(1)
							(2)
							(3)
							(4)
							(5)
				$ 742,824.20			(6)
							(7)
				219,083.74			(8)
				10,000.00			(9)
							(10)
	$ 8.40			7,738.10			(11)
							(12)
				1,000.44			(13)
	$ 8.40			$ 980,646.48			(14)
		$ 8.40*			$ 522,928.59		(15)
							(16)
				$ 14,000.00			(17)
							(18)
							(19)
				1,773.66	12,226.34		(20)
							(21)
				$ 175,000.00			(22)
							(23)
				175,000.00	—		(24)
							(25)
$ 3,053,402.20			$ 1,350,012.12			$ 4,403,414.32	(26)
							(27)
680,546.00			241,886.83			922,432.83	(28)
21,666.67						21,666.67	(29)
19,716.69						19,716.69	(30)
			500,000.00			500,000.00	(31)
368,238.99			254,515.44			622,754.43	(32)
			23,812.85			23,812.85	(33)
							(34)
490,000.00			437,500.00			927,500.00	(35)
							(36)
							(37)
	$ 9,395,151.80			$ 9,395,151.80			(38)
							(39)
							(40)
							(41)
	7,727,075.45		1,668,076.35	7,727,075.45		1,668,076.35	(42)

Description	Record References	Period June 1, 1919 to February 24		
			Charges	
Proceeds from:				
Notes payable of Deep Rock Oil Corporation, face value $200,000 discounted by Standard Gas and Electric Company	I 57, 63			$
Sale of $300,000 face value Deep Rock Oil Corporation 8% notes due 1923 and 1924 to H. M. Byllesby & Co. for account of Deep Rock Oil Corporation	I 57, 63			
Deep Rock Oil Corporation notes in favor of Bradstreet Oil Company issued for account of Standard Gas and Electric Company for property for J. C. Kennedy, Trustee	I 57, 63, II 95, 115, III 26			
Bonds and notes of Deep Rock Oil Corporation purchased by Standard Gas and Electric Company from Deep Rock Oil Corporation:				
$100,500 face value 6% bonds due 1929	I 57, 63			
$7,500,000 face value 6% notes due 1928 including accrued interest of $17,500.00	I 57, 63, II 61, 97, 126, 134			
$1,057,300 face value 8% notes due 1923 and 1924, including accrued interest of $11,476.09	I 57, 63, II 157	$ 964,627.31		
Less $445,300 face value resold to Deep Rock Oil Corporation including accrued interest of $5,937.33	I 56, 62, II 95, 125	(2)408,711.18		
Miscellaneous expenditures made by Deep Rock Oil Corporation for account of Standard Gas and Electric Company	I 57, 63			
Reimbursement to Deep Rock Oil Corporation for expenditures made for extensions and additions to properties of Deep Rock Oil and Refining Company which expenditures were charged by Deep Rock Oil Corporation to J. C. Kennedy, Trustee and R. J. Graf, Trustee	I 58, 63, II 97, 124, 125, 128, 142, 151, 151			
			$24,953,173.54	$15
			15,126,818.87	
			$ 9.826,354.67	

NOTES:

(1) In addition to the sundry expenditures listed in the above schedule, Standard Gas and Electric Company paid $162,000.00 to the Collecto Refining Company; also $1,450.00 to the Corporation Trust Company for statutory representation service for Deep Rock Oil and R the period subsequent to that date. These items were charged by Standard Gas and Electric Company to Deep Rock Oil Corporation items, however, do not appear in the foregoing schedule because the compromise eliminates all transactions which took place under representation service of Deep Rock Oil and Refining Company.

(2) The actual charge by Standard Gas and Electric Company to Deep Rock Oil Corporation upon the resale of these notes to Deep Rock Oil C and the amount of $408,711.18 appearing in the foregoing schedule represented a profit recorded by Standard Gas and Electric Comps

(3) In addition to the cash disbursements by Standard Gas and Electric Company to Deep Rock Oil Corporation and to independent third p disbursements by Standard Gas and Electric Company aggregating $192775.05, which amount, if added to the difference between the Standard Gas and Electric Company over receipts to $12,394,297.63. Such other cash disbursements were excluded from the foregoi acceptances of Deep Rock Oil Corporation's extension plan, and to the extent of $49,350.05, they were paid to subsidiaries of Stands Corporation of oil and gas leases, equipment and materials and $6,60005 to Oklahoma Gas and Electric Company for rental of equip

(4) The investment of Standard Gas and Electric Company in Deep Rock Oil and Refining Company consists of promissory note for the amou as indicated in the foregoing schedule, less $12,500.00 cash received from Deep Rock Oil and Refining Company to apply on the no $2,532,092.11. If the amount of this investment be added to net cash advances of Standard Gas and Electric Company, the sum of t 1928 to February 28, 1933 and this investment would be $4,907,260.02.

24, 1928	Period February 24, 1928 to February 28, 1933			Total			
Credits		Charges	Credits		Charges	Credits	
							(1)
							(2)
195,783.33						$ 195,783.33	(3)
							(4)
							(5)
296,700.00						296,700.00	(6)
							(7)
							(8)
150,000.00						150,000.00	(9)
							(10)
							(11)
80,641.20						80,641.20	(12)
							(13)
7,273,750.00						7,273,750.00	(14)
							(15)
				$ 964,627.31			(16)
							(17)
555,916.13				(2)408,711.18		555,916.13	(18)
							(19)
45,865.55						45,865.55	(20)
							(21)
							(22)
							(23)
1,894,592.11						1,894,592.11	(24)
							(25)
$15,126,818.87		$ 6,850,971.50	$ 4,475,803.59		(3)$31,804,145.04	$19,602,622.46	(26)
		4,475,803.59			19,602,622.46		(27)
		(4)$ 2,375,167.91			(4)$12,201,522.58		(28)

ector of Internal Revenue on account of Federal income taxes for the years 1926 and 1927 of Deep Rock Oil and l Refining Company of which $550.00 applied to the period prior to February 24, 1928 and $900.00 applied to tion in accordance with the provisions of the leases of the Deep Rock Oil and Refining Company property. These ier the leases, except $900.00 paid to the Corporation Trust Company after February 24, 1928 for statutory

Oil Corporation was $451,237.33 including accrued interest of $5,937.33. The difference between the actual charge mpany. This difference has been eliminated from this schedule.

d persons listed in the foregoing schedule for the account of Deep Rock Oil Corporation, there were other cash the charges and credits set forth in the foregoing schedule, would increase the excess of cash disbursements by egoing schedule because, to the extent of $143,425.00, they were paid to H. M. Byllesby and Company for securing ndard Gas and Electric Company ($42,750.00 to Blue Ridge Oil & Gas Company for sale to Deep Rock Oil uipment II 179, 93, III 57).

mount of which Standard Gas and Electric Company has credited the Deep Rock Oil Corporation open account, e note ($1,882,092.11) and capital stock at cost to Standard Gas and Electric Company, $650,000.00, a total of of the total net advances would be $14,733,614.69; and the sum of the total net advances from February 24,